

IN THE COUNTY COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GENERAL LIST

Revised
RESTRICTED
NOT SUITABLE FOR PUBLICATION

Case No. CI-16-01230

YZ (a pseudonym)

Plaintiff

v

THE AGE COMPANY LIMITED

Defendant

JUDGE: HIS HONOUR JUDGE O'NEILL
WHERE HELD: Melbourne
DATE OF HEARING: 27, 28, 29, 30 November 3, 4, 5, 6, 7, 10, 11, 12, 13, 14
December 2018, 29 January 2019
DATE OF JUDGMENT: 22 February 2019
CASE MAY BE CITED AS: YZ (a pseudonym) v The Age Company Limited
MEDIUM NEUTRAL CITATION: [2018] VCC 148

JUDGMENT

Subject: INDUSTRIAL INJURY CLAIM

Catchwords: Claim for damages by a journalist against employer, *The Age* newspaper, as a result of psychological injury said to have been suffered from being repeatedly exposed to traumatic events, as a crime and court reporter – development of Post-Traumatic Stress Disorder – whether psychological injury foreseeable – nature and extent of the complaints made by the plaintiff – state of defendant's knowledge of risk of psychiatric injury – content of duty owed by employer – whether breach of duty – whether breach caused injury – steps the defendant could have taken to reduce risk – contributory negligence – nature and extent of psychological injury – assessment of pain and suffering damages

Cases Cited: *YZ (a pseudonym) v The Age Company Limited (Ruling)* [2018] VCC 1962; *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44; *Johnson v Box Hill Institute of TAFE* [2014] VSC 626; *Wyong Shire Council v Shirt* (1980) 146 CLR 40; *Hatton v Sutherland*; *Barber v Somerset County Council*; *Jones v Sandwell Metropolitan Borough Council*; *Bishop v Baker Refractories Ltd* [2002] All ER (D) 53 (Feb); *Hegarty v Queensland Ambulance Service* [2007] QCA 366; *Woolworths Limited v Perrins* [2015] QCA 207; *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 471; *AZ v The Age (No 1)* [2013] VSC 335; *Lindsay-Field v Three*

Chimneys Farm Pty Ltd [2010] VSC 436; *Bankstown Foundry Pty Ltd v Braistina* [1986] 160 CLR 301; *Taylor v Haileybury* [2013] VSC 58; *Amaca Pty Ltd v Ellis* (2010) 240 CLR 111; *Wyong Shire Council v Shirt* (1980) 146 CLR 40; *Larner v George Weston Foods Ltd* [2014] VSCA 62; *Liftronic Pty Limited v Unver* [2001] HCA 24; *BHP Billiton Ltd v Hamilton & Anor* (2013) 117 SASR 329; *Adeels Palace Pty Ltd v Moubarak* (2009) 239 CLR 420; *ACQ Pty Limited v Cook & Anor* [2009] 258 ALR 58; *March v Stramare (E and MH) Pty Ltd* [1991] 171 CLR 506; *Podrebersek v Australian Iron and Steel Pty Limited* (1985) 59 ALR 529

Judgment: Judgment for the plaintiff – damages assessed – no contributory negligence.

APPEARANCES:

Counsel

Solicitors

For the Plaintiff

Mr T P Tobin SC with
Ms J Cowen

Adviceline Injury Lawyers

For the Defendant

Ms R N Annesley QC with
Ms L M Glass

Wisewould Mahony

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HIS HONOUR:

Preliminary

- 1 This is a trial¹ in which the plaintiff, "YZ" (a pseudonym), claims damages for psychological injuries sustained while employed over a ten-year period from 2003 to 2013 as a journalist with *The Age*.
- 2 It is alleged that as a crime reporter from 2003 until 2009, and then as a Supreme Court reporter from 2010 until 2013, YZ was exposed to trauma and vicarious trauma in investigating and reporting distressing crime, injury and death scenes. She alleges *The Age* failed to have a system in place to enable her to deal with the trauma of the work, failed to provide her with appropriate support and training, failed to intervene when she or others complained, failed to provide counselling and support from qualified peers, failed to allocate her to other appropriate reporting, and transferred her in April 2010 to Supreme Court reporting after she had complained of being unable to deal with trauma as a crime reporter. She claims to have suffered Post-Traumatic Stress Disorder ("PTSD") as a result of the exposure.
- 3 Instances of the trauma included attending murder, death and rape crime scenes, funerals of high profile people, police searches, criminal trials and sentences involving violence, historical sexual abuse cases and the Black Saturday fires. In evidence, she said she was particularly affected by crimes involving children. She alleges being informed her telephone was probably being tapped, and threatened by criminal elements. She says she had to deal with telephone calls from people threatening suicide.

What the Plaintiff alleges – the pleadings

- 4 By her Amended Statement of Claim dated 10 July 2017, YZ alleged breach of contract of employment, alternatively breach of the duty of care owed by *The Age* as her employer, as a result of which she alleges she suffered injury in the

¹ The trial was originally to be heard before a jury. I determined the matter should be heard as a cause – see *YZ (a pseudonym) v The Age Company Limited (Ruling)* [2018] VCC 1962

nature of PTSD.²

5 The Statement of Claim alleges that in the course of her work as a journalist, the plaintiff was “repeatedly exposed to traumatic events and traumatic stress”.

The particulars of such exposure were detailed as:

“Homicides, suicides, fatal car accidents, fire scenes, natural disasters, grieving families, deaths of young children and young adults.”

6 It was pleaded that at all material times the defendant knew or ought to have known that by reason of that exposure, the plaintiff could develop psychological injury. The pleading sets out details of various publications and material over a considerable period of time which were known, or ought to have been known by the defendant, such as would indicate that the plaintiff was at increased risk of psychological injury.

7 The particulars of breach of duty were, relevantly:

“9 The injury occurred by reason of the Defendant’s breach of the duty it owed to the Plaintiff and/or the negligence of the Defendant.

PARTICULARS (sic) OF BREACH OF DUTY AND/OR NEGLIGENCE

- (a) Failing to provide a safe system of work.
- (b) Failing to provide a safe place of work.
- (c) When allocating work to the Plaintiff, knowing the Plaintiff and other employees were at increased risk and:
 - (i) failing to have any or any adequate educational programs to inform employees of the:
 - A. hazards of reporting on traumatic events;
 - B. risks of injury when reporting on traumatic events or stories;
 - C. need to monitor and report symptoms that they may suffer;
 - (ii) failing to have any or any adequate system of periodically screening employees to assess the risk

² It was not contended in the course of the trial or submissions that breach of contract would raise any different legal principles, nor entitle the plaintiff to damages assessed on a different basis, than breach of the employer’s duty of care. For the purpose of simplicity, I shall treat the claim as one in negligence, rather than breach of employment contract. There was no submissions to the contrary by either counsel.

and/or development of psychological injury;

(iii) failing to have any or any adequate peer support program;

(iv) failing to have in place any or any adequate policies or procedures regarding the provision of:

A. follow-up of employees after traumatic events or stories;

B. counselling of employees after traumatic events or stories;

C. peer support (formal or informal) of employees after traumatic events or stories;

D. monitoring of employees after traumatic events or stories;

E. screening of employees after traumatic events or stories;

F. an assessment of employees after traumatic events or stories;

(v) failing to provide any or any appropriate training to the Plaintiff's line managers regarding:

A. follow-up of employees after traumatic events or stories;

B. counselling of employees after traumatic events or stories;

C. peer support (formal or informal) of employees after traumatic events or stories;

D. monitoring of employees;

E. screening of employees;

F. assessing employees;

(vi) failing to provide any or any appropriate training to employees of the Defendant regarding:

the Employee Assistance Program;

counselling;

peer support (formal or informal);

providing peer support (formal or informal) to employees;

monitoring of each other;

(vii) failing to heed the complaints of the Plaintiff regarding

the adequacy, availability and responsiveness of the Employee Assistance Program;

(viii) failing to have an adequate system of:

promoting;

encouraging attendance upon;

communicating;

the use of the Employee Assistance Program;

(ix) failing to provide an occupational health service, for employees of the Defendant, skilled in the diagnosis and assessment of employees who were beginning to develop symptoms of psychological injury, including Post-Traumatic Stress Disorder;

(d) Knowing the Plaintiff was at increased risk:

(i) failing to provide the Plaintiff with any or any adequate:

follow-up screening;

counselling;

peer support (formal or informal);

monitoring;

supervision;

so as to:

(aa) identify any psychological injury;

(bb) identify the symptoms of any psychological injury;

(cc) offer or refer the Plaintiff for appropriate treatment;

(dd) withdraw the Plaintiff from further such reporting or certain types of reporting until she was fit to do so;

(ii) failing to carry out any or any adequate assessment and/or screening of the Plaintiff before requiring her to undertake further work so as to:

identify any psychological injury;

identify the symptoms of any psychological injury;

offer or refer the Plaintiff for appropriate treatment;

withdraw the Plaintiff from further such reporting or certain types of reporting until she was fit to do so;

- (iii) failing to have any or any adequate system of providing relief to employees from repeated exposures to traumatic events or stories in the form of:

rotation of duties;

re-allocation of duties;

rotation of stories;

time off work;

- (iv) failing to have any or any adequate policies or procedures for dealing with employees who have developed symptoms of psychological injury, including Post-Traumatic Stress Disorder;

- (v) failing to have any or any adequate system of intervention by way of:

screening employees;

monitoring employees;

assisting employees;

who had developed symptoms of psychological injury, including Post-Traumatic Stress Disorder.

- (vi) Failing to heed the complaints of the Plaintiff that she was suffering from stress as a result of the work;

- (vii) Removing the Plaintiff from the crime desk but failing to ensure that she was permanently given appropriate duties taking into account the increased risk."

8 As a result of the breach, the plaintiff claims pain and suffering damages. There was no claim for economic loss.

9 At the outset of the trial, Ms Annesley, for the defendant, took issue with the adequacy of the pleaded particulars in relation to:

- the exposure of the plaintiff to traumatic events;
 - the knowledge of the defendant in respect of such exposure;
 - as to how the plaintiff was at increased risk of suffering psychological injury;
- and

- in respect of various particulars of the alleged breach of duty.

10 As a result, I directed the plaintiff file further particulars of those matters. A document entitled “Particulars” was produced which set out in detail the various crime and like scenes the plaintiff attended which exposed her to trauma, and further details as to breach of duty.³

11 Generally, the defendant denied the allegations of the plaintiff. In submissions, the defendant’s position was that the evidence had not demonstrated that:

- “(a) The defendant knew or ought to have known that the exposure to traumatic events directly or vicariously was a foreseeable risk of injury;
- (b) The defendant knew that by reason of her work she was at high risk of foreseeable injury;⁴
- (c) The implementation of a formal peer support program or the introduction of training as to the possible risk of injury from exposure to trauma would minimise the risk of injury;
- (d) She suffered injury as a result of any exposure she had to traumatic events, directly or vicariously;
- (e) The defendant was on notice of the alleged injury or symptoms thereof as a result of her exposure to traumatic events from January 2009.”

12 In essence, the defendant contested foreseeability of the psychological injury, took issue with the nature and extent of duty of care, denied breach, contended that even if there was breach, it did not result in injury (causation). It further alleged contributory negligence, and contended that even if the plaintiff suffered injury as a result of its breach, the injury did not amount to PTSD and was relatively modest, having improved when the exposure ceased.

What was the nature of the Plaintiff’s work and her exposure to trauma?

(a) Crime reporter – 2003 to 2009

13 Before dealing with the issues of whether psychiatric injury was foreseeable, the knowledge of the defendant, and the content and breach of the duty of care,

³ The document was filed on 27 November 2018

⁴ The phrase “high risk of psychological injury” was taken from the plaintiff’s Further Particulars document – page 15

it is necessary to set out in some brief detail the nature of the exposure of the plaintiff to trauma, both direct and vicarious, in the course of her employment.⁵ More comprehensive detail of YZ's investigations and what she observed are set out in the articles she wrote which were tendered in evidence.⁶

- 14 A brief summary of some of the plaintiff's exposure to trauma is as follows:

Office of Police Integrity investigation

- 15 In about 2007, there was an Office of Police Integrity ("OPI") investigation concerning a number of police officers. The plaintiff became aware her name had arisen in the course of evidence. She contacted the police media unit. Her enquiry, she said, led to tapping of telephones of a number of senior police officers. On a number of occasions the plaintiff received anonymous phone calls from, she presumed, police officers, saying "Be careful what you say or who you meet with because there is (sic) others listening in".⁷ The plaintiff had a "feeling" that she was being watched. She met with a Police Association officer, Paul Mullett, who was himself the subject of surveillance. It was known the police were planting listening devices in cafés he was known to frequent. These matters and her name arising in the inquiry were known to an editor of *The Age*.⁸

Carl Williams

- 16 The plaintiff wrote a number of articles concerning the "Gangland Wars" between 2003 and 2007. She received a tip-off that Carl Williams was involved in a shooting. She went to the house of the person it was alleged Williams had shot. That person identified Williams as responsible for shooting him in the leg. She was given a direction from the news desk⁹ to go to Williams' city apartment (she was provided with the address) with a photographer. She spoke to

⁵ *Koehler v Cerebos (Australia) Ltd* (2005) 222 CLR 44 at paragraphs [19]-[20]; *Johnson v Box Hill Institute of TAFE* [2014] VSC 626 at paragraphs [406]-[407]

⁶ Exhibit A

⁷ Transcript ("T") 151, L9-11

⁸ T149-52

⁹ The 'news desk' was the central hub for crime reporters in the Law and Justice team at *The Age*. It comprised editors who were responsible for giving assignments to journalists and to whom those journalists reported. Those editors decided which articles were to be published in the paper and where.

Roberta Williams, Carl's wife, who denied Williams had any involvement. When she returned to *The Age* office, she received a telephone call from the head of the police Purana Task Force which was investigating the Gangland Wars and told she should not approach the Williams as they were "very dangerous people". Subsequently, she received a telephone call from an agitated Roberta Williams to be told "... you need to watch yourself, girl ... I know people, I can have stuff happen to you, I'm going to have people follow you when you leave work today".¹⁰ She said she was upset and anxious as a result of this. Everyone at the news desk heard the telephone conversation. She told the news editor at the time and was told to write a detailed account as to exactly what had happened in case the police had to subsequently be involved. She was concerned for her own safety, and that of her parents.¹¹

Burrell family drowning at Warrnambool (early 2005)

- 17 The plaintiff spent about five days at Warrnambool reporting on the deaths of five members of the family who drowned when they were washed off rocks. She attended the funeral in Ballarat. One child's body was not recovered for a number of days, and, when found, part of his face was missing. She was expected to speak to family members at the funeral. She said it was pretty horrible and draining work. It was difficult to talk to people who were devastated and yet try to get them to tell her about their grief. She said she received no support or counselling from the news desk.¹²

Pochopien murder (June 2004)

- 18 A young mother was shot in her driveway while her husband and son were inside. The plaintiff attended the scene about an hour after the shooting and door-knocked neighbours.¹³ She also spoke to the victim's parents and husband. She went to the victim's workplace to speak to work colleagues, some of whom did not know she had been murdered. She said it was awful. The

¹⁰ T156, L30, T157, L1-2

¹¹ T152-158

¹² T163-166

¹³ Knocking on the doors of relatives or neighbours to obtain information about the victim of a crime was referred to in the evidence as an "intrusion" or a "death knock"

news desk had told her to find out information to file a story. When she attended the scene, the body was still there. There was no enquiry from the news desk as to how she was feeling.¹⁴

Irwin sisters' murder (early 2006)

- 19 Two sisters were raped and murdered by a neighbor in Altona. YZ obtained and saw photographs of the bodies. There was blood everywhere. She spent a day door-knocking in the area. She was asked to track down the parents and friends of the dead girls, which she found very intrusive. She said she was on autopilot much of the time, and it was not until she went home after the story had been filed that she thought about the trauma. She asked herself what would happen if it was her family involved and journalists came to ask for more information.¹⁵

Miranda brothers' deaths in New Zealand (early 2009)

- 20 Two Melbourne brothers died on a glacier in New Zealand. YZ attended the funeral and was very upset. She told her colleagues at the news desk about the funeral and the tragedy of their deaths. She could not stop crying and was comforted by a journalist from another paper. She told everyone as to how she felt and it was clear she was upset.¹⁶

Murder of a pregnant mother (July 2004)

- 21 Anna Kemp was murdered by her husband with a spear gun and chopped up with a chainsaw. He then murdered his sixteen-month old daughter with a spear gun. YZ spent several days at a rubbish dump where police were searching for body parts. She was there when body parts were discovered. The police had a chaplain and counsellors to assist them, but she received no assistance. The officers were said to be deeply affected. She said she was also deeply affected by the experience. She attended the funeral and in 2005, attended the sentencing hearing and wrote an article.¹⁷

¹⁴ T166-167

¹⁵ T168-170

¹⁶ T170-171

¹⁷ T184-187

Tyler Cassidy shooting (late 2008)

- 22 YZ had a police scanner on her work desk. Police had fatally shot a young man. When she arrived at the scene there was a body under a sheet. A woman some short distance away was very distressed because she had not intervened to prevent the shooting. Her job at this and other deaths was to find out about the person who was the victim, get photographs, and obtain as much information from witnesses and police as possible. She was not given boundaries about who to speak to and who not to speak to, nor how to approach such people. She was good at approaching people.¹⁸

Brendan Keilar murder (June 2007)

- 23 Mr Keilar was shot by Christopher Hudson in King Street, Melbourne early one morning. YZ went to the scene. Keilar and another man had attempted to intervene when Hudson was pushing a woman into a taxi. Hudson shot the girl, Keilar and a backpacker. The gunman, Hudson, was still at large and YZ “raced around” trying to find witnesses. She went to a construction site where the weapon was said to have been thrown. She went to some strip clubs to find colleagues of the girl shot. She wrote a number of articles, some with other journalists, about the murder. A friend of YZ knew one of the women involved through a social media platform. She obtained access to that platform. YZ was criticised by friends of the victim for invading the privacy of her online space. Her editors were aware of the criticism. She thought it was invasive, but was commended for it at work. She reported not only upon the death of Mr Keilar, but the subsequent trial. She said it was “pretty awful”. Mr Keilar had young children and a wife.¹⁹

The deaths of Maria and Joe Korp (2005)

- 24 YZ was involved in the story over a number of weeks. It took time for the body of Mrs Korp to be found. The body was eventually found in the boot of a car. She was sent to speak to witnesses in the area and to report on what was happening that day. Mrs Korp survived, in a coma, but died some time later.

¹⁸ T187-189

¹⁹ T190-193

Mr Korp committed suicide. She went to Mrs Korp's funeral. At one point she was at the Korps' house in Mickleham. Mrs Korp's daughter was upset at being "hounded" by the press. She and other journalists tried to speak to her. Details of the relationship between Mr and Mrs Korp came out, which were distressing. She learned in the course of the investigation that Mr Korp's girlfriend hid in the garage, beat Mrs Korp senseless, put her body in the boot and dumped it. YZ said everyone at the news desk knew how awful the story was as she was reporting on details of it. She said it was tiring, both emotionally and physically. She said she was visibly exhausted. During the course of the story, she was working fifteen to sixteen hours per day, and was not paid overtime. It was not possible to take time off very often.²⁰

The murder of David Robinson (July 2006)

- 25 Mr Robinson was a solicitor who was murdered by a disgruntled client. He was shot several times in his office and then chased down the street and shot again. YZ went to the scene the next day, spoke to the police and local shopkeepers. She spoke to Mr Robinson's family later that day. The plaintiff wrote a number of articles about the shooting. She said writing the story was awful.²¹

The murder of Erwin Kastenberger (March 2005)

- 26 Mr Kastenberger was a security guard and was shot in a shopping centre. YZ was sent to the scene. She was there over a number of hours, spoke to witnesses, shopkeepers and police. She saw Mr Kastenberger's body, at one point, about a metre away. She had a disagreement with a senior police officer when she published information he had provided. The officer suggested that because of her publication, the persons responsible for the guard's death might go free. She was very distressed when she got off the telephone, and spoke to another journalist, John Silvester. She told the news desk about it. She subsequently attended the funeral and wrote an article about it.²²

²⁰ T195-198

²¹ T198-200

²² T201-206

The death on the Great Victorian Bike Ride (November 2005)

- 27 A woman died on the bike ride. She was blown under a car, with a lot of witnesses present. YZ stayed in the area for some days, talking to the witnesses and attended the funeral. She consumed a lot of alcohol that night with the photographer that she had travelled with. Around this time, she would drink, sometimes two bottles of wine a night, to try and knock herself out to go to sleep.²³

The murder of Darcey Freeman (January 2009)

- 28 YZ was sent by the news desk to Yarraville, under the Westgate Bridge, where there was a report of the death of a child after being thrown from the bridge. When she arrived, Darcey Freeman had been pulled from the water and ambulance officers were performing CPR. She saw the body from a distance, being placed into the back of an ambulance. The police and ambulance officers were very distressed. The scene was horrific. She thought that this was the “worst day of my life”. She said she could still see the faces of the people at the scene. She was there over several hours and was in shock. She was then sent to the Federal Court where a car reported to be involved in the murder was parked. She was present the whole of that day. She went back to the newsroom and said “I’m done, I can’t do this anymore. I have had enough of death and destruction.” She said she felt she was surrounded by death and misery. She was in tears in the newsroom but completed writing the story. She said she was exhausted and numb. Darcey Freeman was four years old at the time. To this point, she had attended the scenes of about thirty-two murders.²⁴

The Black Saturday bushfires (February 2009)

- 29 About a week after the Freeman murder, Victoria was devastated by the Black Saturday bushfires. YZ did not go to the scene of the fires, but was sent to a community meeting at Kinglake where there were present local residents, police and firefighters. Many of the people there had lost loved ones and their homes. The scene was distressing, as many wanted to go back to search for family

²³ T206-208

²⁴ T208-212

members. A man, who had lost his wife, collapsed near her. One woman was desperate to return to see if her children were alive. YZ burst into tears. She wrote a number of stories about the fires and the effect upon the community. She said it was awful to speak to the people there. She did not see a memo about psychological welfare of those who had reported on the fires.²⁵

Gangland murders (2003 to 2007)

- 30 YZ reported upon, and went to the funerals of various gangland figures, including Graham Kinniburgh, Andrew Veniamin, Louis Moran and Michael Marshall. Marshall was shot in front of his young son. The plaintiff street-knocked doors near his house.²⁶

Mick Gatto

- 31 YZ said it was expected that as a crime reporter during the gangland wars, she should develop links with gangland figures. She went to a fundraising function organised by Mr Gatto. There were underworld figures present. She said it was pretty frightening.²⁷

- 32 Despite her evidence that she was obviously distressed in the presence of editors at the news desk and other *Age* staff, rarely did anyone enquire as to her welfare. She did not receive any training over the period as a crime reporter about how to deal with death and tragedy, save for one day of a two-day training course. The second day of the course dealt with post-traumatic stress, but she was called out to attend a murder scene.

- 33 After the Darcey Freeman case, YZ said she told “everyone on the news desk” that “I just can’t deal with death and destruction any more, I have just done too much, I’m just not sleeping, I’m not coping. I just need to write about something good for a change.”²⁸

- 34 In 2007, she attended for the first time *The Age’s* Employee Assistance

²⁵ T212-215

²⁶ T222-223

²⁷ T223-226

²⁸ T216

Program ("EAP"). At the time she said she was not sleeping well, had regular nightmares about death, was abusing alcohol and would become distressed and cry easily.²⁹ She said she described her symptoms to counsellors at the EAP service, although she said they did not understand the pressure of the newsrooms and the demands of her work. She was not encouraged to speak out about these matters. She said the environment was such that it was difficult to refuse to do the work.

- 35 In about June 2009, YZ went to see her local general practitioner, and was referred to Ms Joy Mott, psychotherapist, for counselling over a period of about three months. The clinical notes of that practitioner, although there is reference to stress at work, largely refer to relationship and family problems.³⁰

(b) Court reporter 2010-2013

- 36 As a result of her complaints after the Freeman case, and telling the news desk that she was unable to go on with crime reporting, YZ was transferred to sports journalism, and reported from February 2009 until April 2010. She said she enjoyed the work, although struggled at the outset. She was supported by other experienced journalists and felt she wrote well. She met deadlines and did not receive any adverse criticism.

- 37 In early 2010, the plaintiff said she was approached by the deputy editor of *The Age* at the time, Mark Baker. He told her that the paper's Supreme Court reporter, Kate Hagan, had been reassigned and he wanted her to take over the Supreme Court reporting round. He told her she was like "a fish out of water in sport".³¹ She declined, saying she had seen her fair share of death and destruction. He suggested she go away and think about it. She received an email from him subsequently, asking again for her to undertake the court reporting job. She said she had not changed her mind and was happy in sport. She was asked to go and speak to him again a short time later and was again

²⁹ T219-221

³⁰ Exhibit 25

³¹ In evidence, Mr Baker said he could recall no such comment

asked to take over Supreme Court reporting. She said “they” told her “it was going to happen”. She said she was shocked and she had made it clear that she did not want to go back to that area. She was offered an “upgrade”. That meant a pay rise. Mr Baker gave her a date to start.³² She eventually accepted the position and commenced in April 2010.

- 38 When she commenced as a Supreme Court reporter, she mostly covered trials in that Court, but on occasions other courts. A brief summary of some of the more substantial cases she covered is as follows:³³

The trial of Peter Caruso

- 39 YZ reported on the trial of Peter Caruso, who struck his wife multiple times with a hatchet. She saw video of the crime scene and autopsy photographs which she said were “pretty confronting”. It was not uncommon in this and other trials for victims’ families to be weeping and hysterical in court.

Brother Best

- 40 YZ was sent to the sentence hearing of Christian Brother Best who admitted molesting and raping many young boys. In the course of the hearing, the victims spoke about being raped and making reports to no effect. Some committed suicide. There were many victims. They spoke about the impact on their lives and their inability to have relationships. They gave evidence about alcoholism and drugs and depression. Some sat in court numb and not speaking. YZ said she was a “blubbing mess” at the end of the hearing. She said the news desk knew what she had been working on that day and that it was distressing. She spoke to the editors about the level of detail necessary to write the story, as it was so horrible. One night editor said no one needed to read the “gory details”. She said she had never forgotten the stories of the victims, some as young as seven or eight at the time.³⁴

³² T235-238

³³ The articles written by the plaintiff over this period were listed and tendered – some of the articles were included as part of exhibit B

³⁴ T193-195

The trial of Arthur Freeman

- 41 YZ had reported on the death of Darcey Freeman. She also covered the trial. She listened to evidence about what had occurred in the lead up to the child's death, including what some of the emergency workers observed. The triple zero emergency calls were played. There was video footage of Mr Freeman in the foyer of the Federal Court sobbing. The police video of Darcey's brothers was played. One brother was six years old and explained to the police what had happened. He described what his father had done and how he had pleaded with his father to turn back, as Darcey could not swim. YZ described the testimony as awful. There were jurors and journalists in tears. She said she felt traumatised after reporting on the trial. The trial judge offered counselling to the jurors who were visibly upset. She was able to obtain family photographs and personal information. For the first time she received an email from someone at *The Age* asking how she was bearing up, given the material involved in the trial. She took several weeks off after the trial to go to New Zealand. She said she felt physically and emotionally spent at the end of the trial. The problems that she had with sleep continued. She said she became jumpy, with a short fuse. She was abusing alcohol.³⁵

Robert Farquharson's retrial

- 42 Farquharson was charged with killing his children by driving his car into a lake. YZ attended an eleven-week trial and sat through all the evidence. She watched the police re-enactment videos, including how long it would have taken for the cabin of the vehicle to fill with water. She listened to the mother's evidence. She had recurring flashbacks at night of the police re-enactment. She covered the various appeals. The mother of the children collapsed at one point outside the Court and YZ assisted her into a taxi. She was very upset.³⁶

Donna Fitchett retrial

- 43 YZ reported on the trial of a mother's killing of her two sons. She reported on the evidence, including that of police and paramedics who attended the scene

³⁵ T245

³⁶ T246-247

and the triple zero emergency call by the boys' father. She also attended the sentence hearing. She said at the time she was not coping. On a number of occasions in 2010, she complained to her general practitioner of being very stressed at work.³⁷ Around this time, YZ said she complained to a senior editor, Mr Mark Fuller, that she was suffering nightmares, flashbacks, and not sleeping well because of her crime reporting work. She told him that the counselling at the EAP was insufficient because it took weeks to get an appointment. She said it was necessary to speak to someone immediately she had a problem. She said he agreed that she was reporting on "some pretty horrible stuff".³⁸

Penny Pratt murder trial

- 44 YZ covered the trial concerning a young mother of two who was stabbed, shot and decapitated with a circular saw. She heard the testimony and the triple zero emergency call. The victim had rung in a distressed state, hiding in bushes, to get police assistance, which did not arrive. She subsequently received an email from an irate reader about her coverage. She made an abrupt response. She was reprimanded by an editor, Mr Dan Oakes, who was more concerned about losing readers than her welfare.³⁹

The trial of Mathew Johnson

- 45 Johnson was convicted of the murder of Carl Williams in prison in December 2011. YZ said she saw the CCTV vision of the murder from a number of angles, including close ups of Williams' head after he had been beaten with a metal pole. The footage took several minutes.⁴⁰

The trial of Shane Bond

- 46 Bond was alleged to have murdered Elisabeth Membrey around 1994. In the course of the trial, she became reasonably close to Ms Membrey's parents. The body was not recovered. The parents were devastated when Bond was found not guilty. They told YZ that their daughter had hoped to have a career in the

³⁷ Exhibit 4
³⁸ T247-250
³⁹ T261-263
⁴⁰ T274-275

media and in fact had received a job offer from Channel 10 before she was murdered.⁴¹

(c) Other matters

47 YZ said she was telephoned on several occasions by women threatening suicide:

- She had been reporting on a woman who had been declared bankrupt without her knowledge. She attended the Magistrates' Court for the hearing and spoke to the woman. She obtained information about the person who had made the application for her bankruptcy and gathered evidence. Sometime later, YZ was sitting at her desk when she received a telephone call from the same woman who said that she was unable to take the stress of the proceeding any more, that it had ruined her life and that she was going to "end it all". She obtained the telephone number of the suicide helpline from another journalist. She spoke to the woman for forty-five minutes or an hour. The woman was fragile psychologically. At the end of the telephone call, YZ was frantic and exhausted. She told Mark Fuller what had occurred and said that she did not know how to deal with telephone calls like that. That night she got drunk. She eventually wrote the article and the person who caused the fraudulent bankruptcy was eventually jailed.⁴²

- A short time later, she received a telephone call from another woman, who, with her husband, had guaranteed a home loan for her brother, who defaulted. Her husband was angry and threatened to leave her. She had a son completing VCE. In the course of the telephone call, Jasmine said that she was going to "call it quits" as she could not cope anymore. YZ was doing all she could to help her. She said she pleaded with her to go and get counselling. The woman promised that she would. She felt that she could not cope with these calls as she was not trained to deal with

⁴¹ T289-292

⁴² T252-255

them. She was concerned as she did not know if what she had said might “tip her over the edge”.⁴³

48 The plaintiff said that the investigations and cases which had the greatest impact upon her were those involving children. She found it difficult to understand how people, in particular parents, could be so violent towards their children.

49 The plaintiff’s evidence in relation to her exposure to trauma was chilling. She was regularly distressed and at times unable to go on. That reaction was no doubt as a result of the PTSD I am satisfied she suffers. Neither this brief summary of the evidence, nor a reading of the transcript, properly reflects YZ’s description of the trauma she observed and wrote about, nor its impact upon her. As was said by Mark Baker, a former deputy editor of *The Age*, in evidence, reporters who were exposed to trauma, either directly or vicariously, could suffer psychiatric injury. Further, attending at a murder or similar scene could be something particularly horrific.⁴⁴ Mr Mark Fuller, formerly an editor and journalist at *The Age*, and now deputy editor, acknowledged that the types of cases the plaintiff was covering were distressing and capable of having an impact upon the journalists.⁴⁵ He agreed the material to which the plaintiff was exposed was traumatic and stressful.⁴⁶ He was mindful that that material could expose someone to the risk of psychological injury, including PTSD.⁴⁷

50 Mr Paul Ramadge, a career journalist, editor, including editor-in-chief of *The Age* from 2008 to 2012, acknowledged that journalists over this period were working in a stressful environment, covering big stories.⁴⁸ He accepted that reporting on Supreme Court murder trials was at the higher end of traumatic

43 T256-257
44 T1250
45 T1116
46 T1125, L21
47 T1125-1126
48 T1176-1177

exposure for a journalist.⁴⁹

51 Ms Annesley, in submissions, described the plaintiff's exposure to trauma as "limited".⁵⁰ In my view, the plaintiff's exposure to trauma was substantial. I accept that she attended the scenes of, investigated and wrote about more than thirty murders as a crime reporter over the years 2003 to 2009. In the course of her time as a Supreme Court reporter, she reported on a significant number of murder trials and sentencing hearings. I accept that the scenes she observed, the people she interviewed and dealt with and the material she observed exposed her to a very high level of trauma, much of it the worst type of violence that can be inflicted by one individual upon another.

Foreseeability of psychiatric injury – general principles

52 As employer, *The Age*, owed YZ a duty to take reasonable care against the risk of foreseeable injury, including foreseeable psychiatric injury. The duty extended to the institution and maintenance of a safe system of work and the provision of appropriate instructions and supervision. The reasonable employer, in determining what ought to be done in respect of the foreseeable risk of injury, needs to balance the magnitude of the risk and the degree of probability of its occurrence. In the modern workplace, there is a positive duty upon an employer to take active steps to prevent the risk of foreseeable injury.

53 Mason J noted, in the well-known passage from *Wyong Shire Council v Shirt*:⁵¹

"A risk of injury which is quite unlikely to occur ... may nevertheless be plainly foreseeable. Consequently, when we speak of a risk of injury as being 'foreseeable' we are not making any statement as to the probability or improbability of its occurrence, save that we are implicitly asserting that the risk is not one that is far-fetched or fanciful. Although it is true to say that in many cases the greater the degree of probability of the occurrence of the risk the more readily it will be perceived to be a risk, it certainly does not follow that a risk which is unlikely to occur is not foreseeable."

54 In *Koehler v Cerebos (Australia) Ltd*,⁵² McHugh, Gummow, Hayne and Heydon

⁴⁹ T1195, L7-13

⁵⁰ Submissions on behalf of the defendant – paragraph 1.4

⁵¹ (1980) 146 CLR 40

⁵² *Supra*

JJ, emphasised that the proper starting point must be consideration of the content of the relevant duty of care:

"Because the appellant's claim was framed in negligence, and because her claim was brought against her employer, it may be thought necessary to have regard only to the well-established proposition that an employer owes an employee a duty to take all reasonable steps to provide a safe system of work. From there it may be thought appropriate to proceed by discarding any asserted distinction between psychiatric and physical injury, and then focus only upon questions of breach of duty. Questions of breach of duty require examination of the foreseeability of the risk of injury and the reasonable response to that risk in the manner described in *Wyong Shire Council v Shirt*.⁵³ But to begin the inquiry by focusing only upon questions of breach of duty invites error. It invites error because the assumption that is made about the content of the duty of care may fail to take fundamental aspects of the relationship between the parties into account."⁵⁴

55 In *Koehler*,⁵⁵ the Court considered the decision of the English Court of Appeal in *Hatton v Sutherland*; *Barber v Somerset County Council*; *Jones v Sandwell Metropolitan Borough Council*; *Bishop v Baker Refractories Ltd*.⁵⁶ In rejecting the proposition that there was only one question which needed to be considered, that is, whether the relevant kind of harm to a particular employee was reasonably foreseeable, the Court said:

"No doubt, as was pointed out in *Hatton*, there will be a number of factors which are likely to be relevant to answering the particular question identified in that case. Those factors would include both the nature and extent of the work being done by the employee, and the signs from the employee concerned – whether in the form of express warnings or the implicit warning that may come from frequent or prolonged absences that are uncharacteristic. What other matters might make the risk of psychiatric injury reasonably foreseeable was a question not explored in argument. It is a question that may require much deeper knowledge of the causes of psychiatric injury than whatever may be identified as common general knowledge. But neither the particular issues identified in *Hatton* nor the question from which they stem (was this kind of harm to this particular employee reasonably foreseeable?) should be treated as a comprehensive statement of relevant and applicable considerations. . . ."⁵⁷

(Footnotes omitted.)

56 In *Koehler*,⁵⁸ the risk of psychiatric injury was found not to be foreseeable in the

53 (Supra) at 47-8

54 *Koehler v Cerebos (Australia) Ltd* (supra) at paragraph [15]

55 *Ibid*

56 [2002] All ER (D) 53 (Feb)

57 *Koehler v Cerebos (Australia) Ltd* (supra) at paragraph [22]

58 *Ibid*

circumstances. The Court found the appellant had agreed to perform the duties which were the cause of her injury and further, there was no reason to suspect that the appellant was at risk of psychiatric injury. The Court said:

“... that is not to say that, in another case, an employee’s agreement to perform duties whose performance is later found to be a cause of psychiatric injury may not have greater significance ...”⁵⁹

57 Further:

“The duty which an employer owes is owed to each employee. The relevant duty of care is engaged if psychiatric injury to the *particular* employee is reasonably foreseeable ...”⁶⁰

(Emphasis added.)

58 The Court said:

“It may be right to say that it is now a matter of general knowledge that some recognisable psychiatric illnesses may be triggered by stress. It is, however, a further and much larger step to take to say that all employers must now recognise that all employees are at risk of psychiatric injury from stress at work. Yet it is that proposition, or one very like it, which must lie behind the Commissioner’s conclusion that it required no particular expertise to foresee the risk of psychiatric injury to the appellant.”⁶¹

59 Callinan J noted that the Court assesses foreseeability “on the basis of the impression created by, and the other overt or foreseeable sensitivities of the actual person affected”.⁶²

60 *Hegarty v Queensland Ambulance Service*⁶³ was concerned with an ambulance officer who suffered psychiatric injury as a result of attending critical and traumatic incidents over a significant period of time. At first instance, the trial judge found that, as a result of attending the traumatic events he experienced cumulative stress. The judge found that had his supervisors and senior officers received appropriate training to recognise the symptoms of such exposure, earlier steps would have been taken, which would have reduced the risk of

⁵⁹ (*Supra*) at paragraph [27]

⁶⁰ (*Supra*) at paragraph [35]

⁶¹ (*Supra*) at paragraph [35]

⁶² (*Supra*) at paragraph [55]

⁶³ [2007] QCA 366

psychiatric injury; however, the Court of Appeal concluded that even if those senior officers had received appropriate training, they would not have been able to recognise signs of possible dysfunction in the plaintiff as he described no outwards signs to even trained observers such as to identify psychological illness. At one point, the plaintiff applied for a transfer to Bundaberg, but the reasons he gave were unrelated to the symptoms he was suffering. Keane J said:

"The dignity of employees, and their entitlement to be free of harassment and intimidation, are also relevant to the content of the duty asserted by the plaintiff. Issues of some complexity arise in relation to when and how intervention by an employer to prevent mental illness should occur, and the likelihood that such intervention would be successful in ameliorating the plaintiff's problems.

... The plaintiff's case means that the employer must be concerned, not only with nonperformance by the employee as an employee, but also with possible episodes of unhappiness in the employee's private life. It is not self-evidently necessary or desirable that employees' private lives should be subject to an employer's scrutiny. ...

... In cases of apprehended psychiatric injury, unlike cases concerned with the amelioration of physical risks in the workplace, important values of human dignity, autonomy and privacy are involved in the formulation of a reasonable system of identification of psychiatric problems which may warrant an employer's intervention and the making of a decision to intervene. An employee may not welcome an intrusion by a supervisor which suggests that the employee is manifesting signs of psychiatric problems to the extent that help should be sought, especially if those problems are having no adverse effect upon the employee's performance of his or her duties at work.

Employees may well regard such an intrusion as an invasion of privacy. Employees may rightly regard such an intrusion as a gross impertinence by a fellow employee, even one who is in a supervisory position. If an employee is known to be at risk of psychiatric injury, prospects of promotion may be adversely affected and questions may arise as to the entitlement, or even obligation, of the employer to terminate the employment. Employees who are ambitious, and eager for promotion, and whose signs of dysfunction might equally be signs of frustrated ambition, might rightly be deeply resentful of suggestions which reflect an adverse assessment of the employee's ability or performance and prospects of promotion. ...

... Further, 'litigious hindsight' must not prevent or obscure recognition that there are good reasons, apart from expense to the employer, why the law's insistence that an employer must take reasonable care for the safety of employees at work does not extend to absolute and unremitting solicitude for an employee's mental health even in the most stressful of occupations. A statement of what reasonable care involves in a particular

situation which does not recognise these considerations is a travesty of that standard.”⁶⁴

(Footnote omitted.)

61 Further:

“It must be said immediately that, while an employer owes the same duty to exercise reasonable care for the mental health of an employee as it owes for the employee’s physical well-being, special difficulties may attend the proof of cases of negligent infliction of psychiatric injury. In such cases, the risk of injury may be less apparent than in cases of physical injury. Whether a risk is perceptible at all may in the end depend on the vagaries and ambiguities of human expression and comprehension. Whether a response to a perceived risk is reasonably necessary to ameliorate that risk is also likely to be attended with a greater degree of uncertainty; the taking of steps likely to reduce the risk of injury to mental health may be more debatable in terms of their likely efficacy than the mechanical alteration of the physical environment in which an employee works.”⁶⁵

(Footnotes omitted.)

62 The test of reasonableness, or reasonable steps, requires an assessment of the “degree of probability that the risk of psychiatric injury may occur, even when the reasonable foreseeability test of a risk that is not far-fetched and fanciful, has been satisfied”.⁶⁶

63 In *AZ v The Age (No 1)*,⁶⁷ McMillan J was concerned with a claim for psychiatric injury which arose in circumstances not dissimilar to the present case. The plaintiff was a photographer working for *The Age* and was assigned to photograph a range of traumatic events, as a result of which she developed PTSD. In considering the issue of foreseeability of psychiatric injury, her Honour referred to a number of authorities, including *Koehler*⁶⁸ and *Hegarty*.⁶⁹ She noted that in assessing the duty of care, industry standards were relevant, although not determinative.⁷⁰ Contemporary community standards were also

⁶⁴ (*Supra*) at paragraphs [43]-[47]

⁶⁵ (*Supra*) at paragraph [41]

⁶⁶ *Woolworths Ltd v Perrins* [2015] QCA 207 at paragraph [151] per Spigelman CJ; *Nationwide News Pty Ltd v Naidu* (2007) 71 NSWLR 471 at 478, paragraph [26]

⁶⁷ [2013] VSC 335

⁶⁸ *Supra*

⁶⁹ *Supra*

⁷⁰ See *Lindsay-Field v Three Chimneys Farm Pty Ltd* [2010] VSC 436 (J Forrest J at paragraphs [52]-[72])

relevant.⁷¹ Her Honour had reservations as to whether the plaintiff had attended all of the scenes of trauma described in her evidence. She found that the risk of injury was not foreseeable. Her Honour concluded:

“... Foreseeability in this case raises questions as to the knowledge of the defendant and what the defendant is entitled to assume; the nature and extent of the work being done by the plaintiff; the overt signs given by her; and whether there were any foreseeable sensitivities. For reasons that follow, I consider that the plaintiff’s injury was not foreseeable.”⁷²

64 In *Taylor v Haileybury*,⁷³ Beach J, drawing on the judgment of Keane JA in *Hegarty*,⁷⁴ observed:

- “(a) First, in a negligent infliction of psychiatric injury case, the risk of injury may be less apparent than in cases of physical injury.
- (b) Secondly, whether a risk is perceptible at all may in the end depend upon the vagaries and ambiguities of human expression and comprehension.
- (c) Thirdly, whether a response to a perceived risk is reasonably necessary to ameliorate that risk is also likely to be attended with a greater degree of uncertainty; the taking of steps likely to reduce the risk of injury to mental health may be more debatable in terms of their likely efficacy than the mechanical alteration of the physical environment in which an employee works.
- (d) Fourthly, the private and personal nature of psychological illness, and the consequential difficulties which attend the discharge of an employer’s duty in this respect, must be acknowledged as important considerations.
- (e) Fifthly, the dignity of employees, and their entitlement to be free of harassment and intimidation, are also relevant to the content of the duty that might be asserted by a plaintiff.
- (f) Sixthly, issues of some complexity arise in relation to when and how intervention by an employer to prevent mental illness should occur, and the likelihood that such intervention would be successful in ameliorating an employee’s problems.”⁷⁵

65 On the basis of the case law to which I have referred, I am satisfied that I should approach my analysis of the issue of foreseeability by adopting the following principles:

⁷¹ *Bankstown Foundry Pty Ltd v Braistina* [1986] 160 CLR 301 at 308-309

⁷² *AZ v The Age (No 1)* (*supra*) at paragraph [233]

⁷³ [2013] VSC 58

⁷⁴ *Supra*

⁷⁵ (*Supra*) at paragraph [116]

- (a) The duty of care which an employer owes is a duty to the individual employee and is engaged if psychiatric injury to the particular employee is reasonably foreseeable, that is a risk which is not farfetched nor fanciful;
- (b) The starting point for any analysis as to the content of the duty of care in a case such as this involves consideration of the fundamental aspects of the employment relationship between the plaintiff and the defendant;
- (c) In examining the employment relationship, factors which are relevant include:
 - (i) the presence of any signs from the employee, whether express or implicit, that he or she was at a risk of developing psychiatric injury;
 - (ii) the specific nature of the tasks required to be undertaken by the employee;
- (d) All employers cannot be expected to recognise that all employees are at risk of psychiatric injury from work duties. The issue as to whether such a risk should have been recognised in any particular instance depends upon consideration of all the circumstances;
- (e) The test of whether an employer acted reasonably involves an assessment of the degree of probability that the risk of psychiatric injury may occur, even when the reasonable foreseeability test has been satisfied. In making such a determination, it is appropriate to take account of the fact that in a case involving the infliction of psychiatric injury:
 - (i) the presence and/or significance of the risk of injury may be less apparent than in the case of physical injury;
 - (ii) whether a risk is perceptible at all may depend upon the vagaries and ambiguities of human expression and comprehension;
 - (iii) whether a response to a perceived risk is reasonably necessary to

reduce or eliminate that risk, should take account of the fact that steps to reduce the risk of psychiatric injury are likely to produce a less certain outcome than the mechanical alteration of a physical environment in the case of physical injury;

- (iv) the private and personal nature of psychological illness makes it difficult in many instances for an employer to discharge its duty;
- (v) the dignity of employees and their entitlement to be free of prying enquiry and intimidation are relevant to the content of the duty;
- (vi) complex issues arise as to when and how intervention by an employer to prevent mental illness should occur.

66 Before assessing whether the risk of psychiatric injury was foreseeable to the defendant, it is relevant to explore the state of the defendant's knowledge.

What was the state of knowledge of the defendant of the risk of psychiatric injury around the time the Plaintiff started work as a journalist in 2003?

67 The plaintiff tendered a range of articles and various journals upon which she relies as to the state of knowledge in the industry generally of the risk of psychological injury when exposed to trauma.⁷⁶

68 In 1992, Mr Nic Place published an article in "Australian Studies in Journalism", entitled "Journalists and trauma: the need for counselling". Mr Place was a Melbourne award-winning journalist. His study was based upon interviews with counsellors, cadets, editors and others. It was largely conducted by way of formal interview, together with reference to published texts and television footage. The purpose of the article was to examine whether journalists would find counselling, psychological debriefing and improved training beneficial, after exposure to trauma. The article made reference to "intrusions", that is, journalists, after attending traumatic scenes, would door knock and interview relatives, friends and witnesses about what had occurred. He noted that police

⁷⁶ Exhibit E

cadets received specialised teaching on mental traumas and what to expect in their work. The article detailed a range of common reactions to trauma. The author noted:

"Newspapers appear to still rely on the traditional teaching method of on-the-job 'baptisms of fire'. Cadets I spoke to from the *Herald-Sun* and the *Age* all said they had received no official guidance about how to approach police rounds, 'death knocks' and the like before being sent on to the job."⁷⁷

69 Various counsellors interviewed by Mr Place were said to be strongly of the view that journalists should receive some form of debriefing or counselling, as well as education before being sent on police rounds.⁷⁸ The article concluded:

"In short, it would appear to be time that the media organisations followed the lead of the police, ambulance service and other regular attendants at tragic events and scenes of bereavement. Organisations such as Fairfax and News Ltd should set up some form of official counseling and debriefing programs.

...

Certainly, it would appear that official newspaper cadet training schemes could be improved so that inexperienced reporters are given some idea of what to expect, how to react and how they will probably feel when sent out on an 'intrusion' or the like. Positive listening skills as well as lectures from experienced police rounds reporters and counsellors about the *emotional* side of journalism could make all the difference. ...

For after-the-event aid, newspapers have several options available. The most comprehensive aid a paper could provide its workers would be to have a full-time on-call counsellor(s) ready to carry out debriefings or just have a chat about emotional disturbances as they come up."⁷⁹

70 Mr Place also recommended a crisis line system, and a peer support system involving senior journalists, trained in basic skills. He concluded:

⁷⁷ at page 139

⁷⁸ at page 143

⁷⁹ at page 153

"Whichever of the above options newspapers elect to take up, it is time something was done. Our society appears to be becoming more violent and the papers appear to be as intent as ever to highlight crime stories, if not more so considering Beecher's assessment of the ever-present competition with TV. That decision to heavily cover police rounds is an inevitable part of the endless battle for greater circulation figures, but the reporters should not have to pay with their sensitivity, feelings and emotions. Help should be at hand the papers should admit their responsibility."⁸⁰

- 71 Ms Annesley criticised Mr Place's article. She said he was not trained in medicine or science, and further questioned his methodology.⁸¹
- 72 Notwithstanding these criticisms, I found the Place article relevant, and the warnings given by the author about the effect upon journalists of exposure to trauma to be clear and persuasive. I was not taken to any evidence as to the extent to which the "Australian Studies in Journalism" was circulated within the newspaper community, but as it was clearly directed at newspapers, mentioned, *The Age* and *Fairfax*, and was written by a journalist who won the Australian Press Council's 1991 prize for student theses, I accept it was something that would have been known within the newspaper community.
- 73 In 2002, Dr Cait McMahon published an article "Covering disaster: a pilot study into secondary trauma for print media journalists reporting on disaster" in the *Australian Journal of Emergency Management*. The article referred to a presentation by Michael Gawenda in 1998 to the National Conference of the Australian Society for Traumatic Stress Studies which raised the question of the impact upon journalists reporting on disasters, particularly younger journalists, and noted they had no training in dealing with grief or trauma. The article referred to an ABC 'Four Corners' program in 1993 which suggested that journalists had lasting emotional reactions in covering trauma. Dr McMahon's results in the pilot study showed journalists experienced significant levels of intrusive images and thoughts at the time of reporting on a traumatic story. She also identified avoidance behavior, somatic symptoms, anxiety and insomnia,

⁸⁰ at pages 156-157

⁸¹ T1283

social dysfunction and depression. The study examined coping mechanisms, including depersonalisation, discussion with colleagues, alcohol and drugs, and black humor. The findings of the study were said to correlate with similar studies in the United States. The report noted:

- The typical journalist reporting on trauma was a single woman of approximately twenty-seven years of age who had reported particularly on murder, rape and vehicle accidents.
- Journalists reporting on trauma had a significantly higher rate of somatic symptoms than non-trauma covering journalists and were marginally more susceptible to depression, social dysfunction and anxiety and insomnia.
- The symptoms were likely to decrease over time.
- The majority of journalists experiencing intrusiveness, avoidance and depression were likely to experience those symptoms for one to three years after the event.
- A majority of journalists would like debriefing or an opportunity to talk about traumatic experience following covering of trauma, tragedy and disaster.
- The study concluded:

“Finally it can be said that the proposition of journalist Nic Place (1992), that some journalists are impacted by the traumatic stories they cover, appear to be supported by the present study. Not only do some journalists report experiencing quite serious traumata at the time of covering stories of a critical nature, it also seems that they continue to experience residual effects afterwards. Some of the symptoms they tend to experience are within the realm of post-traumatic stress and acute stress disorders.”

74 The pilot study was not published until 2001, and only a small proportion of journalists at *The Age* and *The Herald-Sun* who were provided with the questionnaire, responded.⁸² In evidence, Dr McMahon said she presented the study to the editor of *The Age* at the time, she thought Alan Kohler. She had

⁸² T772

been working for *The Age*, and was given permission to carry out the study.

75 Notwithstanding the somewhat limited number of participants in the pilot study and that it was only a pilot, nonetheless I am satisfied from the evidence of Dr McMahon that she provided it to a senior editor at *The Age* where she was working at the time. I have little doubt it came to the knowledge of senior management at *The Age*.

76 Dr McMahon's report of May 2018 was tendered;⁸³ however, much of the report, which examines the link between the development of PTSD and the covering of trauma by journalists, looks at research over the years after 2008, up until 2018. The report in that regard has limited probative value.

77 In evidence, Dr McMahon referred to a number of other publications available before 2003, and related to trauma and journalism. They included research by Philip Castle, Roger Simpson and James Boggs in 1999, Elana Newman and David Handschuh around 2001. She said the field had "started to open up around that time".⁸⁴

78 In 1999, Philip Castle, a lecturer in journalism at the University of Queensland, published an article in the "Asia Pacific Media Educator" entitled "Journalism and trauma: Proposals for change". He had been a journalist at the *Canberra Times* and also was the Director of Information at the Australian Federal Police. He said that in 1986, he wrote an article at the request of the Australian Journalists Association which featured in its in-house journal, concerning reporting on trauma. He said he received a large response from readers. At the time he had been a police reporter over many years. He noted PTSD counselling began in the Victorian Ambulance Service in the mid 1980s. He interviewed twelve journalists and a photographer who had covered major traumatic events. He said:

"New journalist trainees are often blooded by being sent to cover a

⁸³ Exhibit H

⁸⁴ T727

traumatic event, particularly the 'death knock'. It is awful for such an inexperienced person to attempt to do this with little training."

- 79 He suggested a peer support system which had been adopted by the Queensland Ambulance Service may be a good model for journalism with trained counsellors who were also journalists. The twelve journalists he interviewed expressed concern that any in-house counselling service should be independent, divorced from their employer and confidential. He made reference to the work of Dr Frank Ochburg and the DART Foundation. He noted that not only may journalists suffer directly from trauma, but also from a perception that their own organisations were not supportive.
- 80 Ms Annesley was critical of the article of Mr Castle, given it involved the opinions of twelve journalists only. She said the purpose of his article was to generate ideas and recognised the difficulties with peer support. Nonetheless, the Castle article, and the others to which I have referred, were in the journalistic arena at the relevant time and ought to have indicated a warning in respect of the emotional health of journalists exposed to trauma.
- 81 The plaintiff tendered⁸⁵ various other relevant articles and papers, including:
- *'Trauma Exposure and Post-Traumatic Stress Disorder Among Photojournalists'*, VCQ, Elana Newman, Roger Simpson and David Handschuh, 2003.
 - *'Risking more than their lives: The effects of post-traumatic stress disorder on journalists'*, The Freedom Forum, 2001.
 - *'Tragic Consequences: How journalists survive on a diet of death and destruction'*, Jocelyn Suiter, Australian Journalism Review, July 2001.
 - *'Get the story and then get counselling'*, Sally Jackson, *The Australian*, October 2002.

⁸⁵ Exhibit E

- 'DART Centre & Frontline Club Look to Support Journalists', DART Centre for Journalism and Trauma, November 2003.
- 'Trauma Discussion Proves Helpful', DART Centre for Journalism, 2003.
- 'Horror is hard to cope with', Alison Crosweller, *The Australian Newspaper*, 27 November 2003 – referring to the study by Dr McMahon.

82 All of these articles deal in one way or another with the relationship between psychological injury and journalists who report on trauma. They provide various recommendations, including counselling for those on the front trauma line.

83 In 2002, *The Age* engaged David Caple to undertake a risk management review.⁸⁶ Its purpose was to assess occupational health and safety risks for activities undertaken by *Age* staff outside the work environment, across a range of areas. The review identified a potential hazard – “personal distress associated with witnessing confronting news stories”. It noted that the EAP was available for debriefing of journalists. Under “Potential Future Risk Controls” there was recorded:

“11.1 The feasibility of introducing a peer support program should be discussed. This would involve training of volunteers within the journalists to provide informal peer support and debriefing as an alternative to the service provided by the psychologists.

11.2 The health centre should record psychological issues as part of the incident reporting systems.”

84 The review was commissioned by *The Age*. Mr Colin McKinnon, the training editor at *The Age*, concerned with the professional development of editorial staff, was aware of the review.⁸⁷ He was keen to introduce a peer support program at the paper over many years. It had not been implemented by the time he left in 2015.⁸⁸

85 In 2002, *The Age* undertook a workshop in relation to peer support conducted

⁸⁶ Exhibit AD
⁸⁷ T1068, L2
⁸⁸ T1069

by Professor Embleton.⁸⁹ There was a follow-up two years later.⁹⁰ The review suggested a peer support process with “a thoroughly trained peer supporter who has the back up support, encouragement and monitoring of a mental health professional”. The workshop was also facilitated by Mr Cratis Hippocrates, a learning and development manager – editorial, at Fairfax.

86 The evidence of Mr McKinnon, in respect of the knowledge of *The Age* of the risk of psychological injury from exposure to trauma, was significant. It was his responsibility at *The Age* to design a safe system of work for its employees. He said in 2002, the Fairfax organisation was aware that reporters who were exposed to trauma, including vicarious trauma, were at risk of suffering psychological injury.⁹¹ He said the issue had emerged in the 1990s, was consolidated by 2002 and emphasised by Mr Caple’s risk management review, the Peer Support Program conducted by Professor Embleton and Mr Hippocrates and with the knowledge from Gary Tippet’s return from the DART organisation in the United States.⁹²

87 He said crime reporters were probably the ones with the greatest exposure to trauma. Throughout the period of 2003 to 2009, he said there was no one trained in providing appropriate peer support to the crime desk.⁹³ There was no induction training as to trauma exposure and the risks associated with it.⁹⁴ He recognised the need for the implementation of an appropriate program but was frustrated in putting it into place because of financial constraints, and lack of interest.⁹⁵ He would have introduced a peer support program with appropriate training. He was unable to obtain funds for it. He said such a program should have been introduced in 2004. He was aware that a similar program was working in the BBC in London, and the ABC in Australia. He

89 Exhibit U
90 Exhibit AC
91 T1086, L10
92 T1086, L15
93 T1087, L6
94 T1087, L8
95 T1087, L22

accepted the greater exposure to trauma, the greater the risk of injury.⁹⁶ He said all young journalists should get support and training.⁹⁷ He was aware crime reporters had a considerable exposure to trauma.⁹⁸ He was frustrated that he was unable to put into place a formal peer support program.⁹⁹

88 He thought it was probably necessary to have eight to ten experienced journalists trained in peer support as part of an appropriate program.¹⁰⁰ They should be trained by Dr Cait McMahon and the DART Centre in how to properly debrief journalists who were exposed to trauma. Those senior journalists should have experience with trauma and understand what was involved. There were people interested in the role. He said it would be necessary for Dr McMahon to attend for half of each week to begin with, for the first year of intensive training, and to be available in the newsroom.¹⁰¹

89 Evidence was given by Mr Gary Tippet, a long-term journalist at *The Age* and *Sunday Age*. In 2004, he attended, under a fellowship sponsored by *The Age*, the DART Centre in the United States on a four-day course relating to trauma in journalism and self-care of journalists exposed to stress. He provided a report to *The Age* upon his return.¹⁰² The report was provided to Mr Andrew Jaspan, the editor-in-chief at *The Age*, and other senior executives at *The Age* and Fairfax. By the time of his report in 2004, the DART Centre had been established in Australia. It was a prime resource centre in relation to the effect upon journalists of reporting on trauma.

90 Mr Tippet's report noted that worldwide major traumatic events such as 9/11 and bombings in Oklahoma and Bali had resulted in media organisations around the world being more aware of the emotional impact on journalists

96 T1089, L6
97 T1089, L29
98 T1090, L10
99 T1091, L25
100 T1092, L24
101 T1092-1093
102 Exhibit K

covering such tragedies. He referred to part of the DART Mission Statement:

“... With other first responders, journalists face the dual challenge of responding professionally to what they witness and dealing with the psychological impact on themselves and their colleagues.”

91 Mr Tippet noted studies which, at the extreme end, had uncovered symptoms of alcoholism, depression and PTSD in journalists exposed to trauma. Further symptoms included nightmares, flashbacks, heightened anxiety and avoidance behaviour. His report said it was not only the crime reporters who were exposed to traumatic stress in journalism, but also court reporters, sitting through murder trials with stark forensic evidence, and seeing the effects upon families. He also noted young journalists doing “intrusions” were at risk. He said the trauma could have a cumulative effect. Amongst the recommendations, he suggested that the industry was ready for a “sea change” as to do otherwise would be costly in a litigious society. He suggested *The Age* be more proactive in addressing the issues of trauma. He suggested:

- (i) An internal training program, to be run over two days to mid-career journalists involved in reporting traumatic incidents. Such a course should cover dealing with victims of trauma and of self-care for journalists, together with the clinical side of trauma and stress. There should be education on best practice with interviewing victims and intrusions;
- (ii) A similar intensive component should be introduced to trainee journalists;
- (iii) Most importantly, a training and support program should be initiated, directed at editors, chiefs of staff and the like, to understand the issues and how to identify staff who might be at risk. It would include supporting staff on assignment, conducting briefings and risk assessments;
- (iv) Fairfax should maintain a strong relationship with the DART Centre. Staff of that Centre should be encouraged to conduct conferences and symposiums.

92 Mr Ramadge gave evidence as to the financial constraints which were imposed over his time as editor.¹⁰³ He said that he was aware of reports provided by Gary Tippet, and said he had a broad awareness that journalists exposed to direct and vicarious trauma may suffer psychiatric injury.¹⁰⁴ He said serious considerations should have been given to the recommendations of Mr McKinnon.¹⁰⁵ He acknowledged that reporting on crime would expose a journalist to particular trauma.¹⁰⁶ He accepted that YZ would be at the forefront of the risk of suffering injury.¹⁰⁷ He accepted that even although YZ was a journalist performing at a very high level, there are people performing at that level who could be suffering a severe psychiatric condition.¹⁰⁸

93 Mark Fuller, a long-time editor at *The Age*, and state news editor in June 2010, gave evidence that he was aware crime reporters were dealing with issues which were challenging.¹⁰⁹

94 He was asked:

Q: "Yes, you had no awareness of people doing this work being at risk of injury?---

A: I was aware of the possibility that they could be.

Q: So you were aware that people doing this work were at risk of injury?---

A: Well, aware that they could be exposed to traumatic events.

Q: That is a different question. We all knew they were exposed to traumatic events. Did anyone by their teaching cause you to understand that they were at risk of injury, that is a psychological injury, by reason of doing this work?---

A: I certainly was mindful of that, yes.

Q: I think the words are quite clear, were you aware that they were at risk of injury by reason of doing this work?"

103 T1155
104 T1186
105 T1188
106 T1193
107 T1194
108 T1196, L15
109 T1124, L16

MS ANNESLEY:

Q: "Your Honour, the question's been answered."

HIS HONOUR:

A: "I'm not sure it has."

Q: Let me put it another way to you, Mr Fuller?---

A: Sure.

Q: It seems clear that the material to which the plaintiff was exposed was traumatic stressful, I don't think there is any issue with that, is there?---

A: Yes.

Q: What you're being asked specifically is given that, given that she and possible others were exposed to this traumatic crime reporting, court reporting material?---

A: Yes.

Q: Were you aware whether that might, and obviously the word is might, not, does or will?---

A: Yes.

Q: Might expose someone in her position to the risk of a psychological injury, post-traumatic stress or anxiety or depression or something like that?---

A: Yes, that was something we were mindful of, yes.

Q: You were aware of it, aware of the risk?---

A: Yes, I suppose by implication, yes.

Q: What do you mean by implication?---

A: Well, we were aware that material they were being exposed to could cause them some trauma, experience some trauma.

Q: What do you mean by experience some trauma?---

A: That they may have found those events traumatic.

Q: Yes."

MR TOBIN:

Q: "But did you have the further knowledge that because they found those events to be traumatic, they were at risk of injury?---

A: I suppose by extension, yes."¹¹⁰

95 Mr Fergus Shiel, who was employed by *The Age* from 1997 to 2017 as a journalist and then in various editorial roles, including as national news editor, was asked:

Q: "And you knew from your work as a journalist and from what Mr Tippet spoke to you about in 2004, that there was a risk of journalists suffering from psychiatric conditions when exposed to trauma or vicarious trauma in the course of their work, that is correct?---

A: You know, it is correct, it is correct that there is risk and we were all aware of it. However, again, I don't want to split hairs because I'm fully aware that court cases can be very upsetting, disturbing. But really the dark stuff was about people going to plane crashes, people going to war zones. It wasn't specifically about court cases, and in fact I don't recall there being any training about court cases."¹¹¹

96 Mr Mark Baker was deputy editor of *The Age* in 2008. He accepted that exposure to trauma may have an impact on the emotional health of a journalist.¹¹² He said the vast majority of journalists can work in highly stressful environments, and cover distressing stories, and it depended upon the individual as to the reaction.¹¹³

97 In submissions, Ms Annesley made a number of responses as to the knowledge of *The Age* about the risk of psychological injury as a result of being exposed to trauma. She said:

- There was little if any evidence that the various articles referred to came to the knowledge of the defendant.
- There was little evidence that the contents of the articles were true.
- None of the articles could support a finding that the defendant knew that the traumatic work to which the plaintiff was exposed carried a risk of psychological injury.

¹¹¹ T1218, L12-24

¹¹² T1246, L14; T1250, L17; T1252, L9

¹¹³ T1253, L12

- She was critical of the methodology of many of the articles.¹¹⁴

What was the state of knowledge of the Defendant of the Plaintiff's symptoms and complaints from 2003 to 2009?

98 YZ commenced with *The Age* in November 2003 as a Level 3 crime reporter. She had five years' experience as a journalist on a regional newspaper, having graduated from university in 1998. She was twenty-seven years of age when she started, and had never worked purely as a crime reporter before. She said crime reporting was a male dominated area. She said the environment discouraged her from speaking out about psychological trauma. She said on occasions other members of her peer group were crying in the newsroom, although not the men.¹¹⁵

99 I have made reference to some of the responses by the plaintiff to those at the *Age* when she was covering traumatic stories from 2003 to 2009.

100 YZ attended the EAP for the first time in 2007. She said the symptoms of PTSD were starting to emerge.¹¹⁶ She said she never felt empowered by *The Age* to say no to any particular task.¹¹⁷ There were occasions when she was told to "toughen up" although in a joking manner. The environment was such that it was an "unwritten law" that if you had a particularly bad day you would go and have a drink after work.¹¹⁸ There was no encouragement to speak up about psychological trauma.

101 YZ said her personality changed drastically. It was hard to maintain a sense of humour. She had a very short fuse and snapped at people a lot.¹¹⁹ She said:

¹¹⁴ Annexure B to the defendant's submissions – paragraphs 9-12

¹¹⁵ T692, L7

¹¹⁶ T221, L7

¹¹⁷ T221, L21

¹¹⁸ T221, L29

¹¹⁹ T692, L22

"Well, I wasn't running around telling everyone, 'I've got PTSD', I wasn't doing that. I'm not saying that I did advertise my condition. I tried so hard to get better, I thought there was something wrong with me, I thought, you know, how come these people can do it for years on end and, you know, seem to be relatively okay? Why am I so weak, why am I not coping?"¹²⁰

102 YZ said that she broke into tears regularly, maybe four or five times a year.¹²¹ She said there was a time when her colleagues, including editors and senior writers, spoke to the deputy editor, Mr Simon Mann, because she had covered a particularly tough incident, a fatal police shooting of Tony Clarke, as a result of which she was very distressed. Mr Mann called her to his office and said:

"Listen, you have been doing it pretty tough lately, I want you to take your husband out to dinner and bring me the receipt."

103 Mr Mann indicated that she was struggling and not coping.¹²² She said Ian Munro and John Silvester, co-reporters, had told Mr Mann as much.¹²³ She said sometimes, in order to meet deadlines after a traumatic event, she fell in a heap and abused people in the newsroom.¹²⁴

104 YZ said she did not make a secret of the fact that she was going to EAP in 2007 and in 2009. She said she was stressed and struggling as a result of what had been raised in the OPI hearing and was comforted by senior colleagues.¹²⁵ She said she was regularly snappy with people. These matters were known at the time "within the editor (sic) of the Age".¹²⁶ In cross-examination, YZ said she told the Law and Justice team (being Ian Munro, Steve Butcher, John Silvester, Selma Milovanovic, Jamie Berry and Fergus Shiel) that she was going to speak to someone about how stressed she was concerning the OPI investigations. Ms Lara O'Toole, a colleague, was aware of these investigations and said the plaintiff was "just extremely concerned and worried" about the hearings.¹²⁷

¹²⁰ T512, L19-26
¹²¹ T364, L1
¹²² T364, L9
¹²³ T365, L6
¹²⁴ T365, L18
¹²⁵ T366, L6
¹²⁶ T152, L 12
¹²⁷ T1003, L20

105 YZ said no enquiry was made of her by senior editors as to her wellbeing when she was covering particularly traumatic incidents, despite the news desk being aware of the nature of the crimes. This included the Pochopien murder and the Burrell family drowning. She described being visibly exhausted covering the Korp murder in 2005. In these instances, the news desk was aware, at least in general, about the content of the stories she was covering. In any event, it was obvious from the articles she wrote. During her coverage of the Tyler Cassidy murder in 2008, YZ said:

"There were days – or nights, I should say, when I was often at the office very late and I was exhausted, having been out at crime scenes all day and half the night sometimes and at night – nobody asked, it was just, you know, 'well done, maybe tomorrow you can try and get a different photo', or 'you can speak to other family members', it was about the story. I know comments were made about me being a tough cookie or, you know, if I was looking particularly exhausted or upset it was just – it was a blokey – I worked in a blokey environment, all of the other crime reporters aside from a short maybe a year or two, I was the only woman in there, so it was, you know 'toughen up princess'."¹²⁸

106 In relation to her attending the Williams' apartment, she said she was directed to attend, and given the address by the news desk. As a result of her encounter with the Williams, she was told to write an account of what happened. She said the news desk knew all about it.¹²⁹ Ms Lara O'Toole was aware of YZ being threatened by Roberta Williams, and said the plaintiff had felt "extremely concerned".¹³⁰ During the gangland wars, YZ also recounted working around the clock, and how she let her employer know that she was on her way to another shooting.¹³¹

107 When she attended the funeral of the New Zealand brothers, she told everyone how upset she was, that her face was blotchy and eyes red.¹³²

108 Of most significance was her reaction to the Darcey Freeman case. She told the news desk that she was done and that she had had enough death and

¹²⁸ T189-190
¹²⁹ T157
¹³⁰ T1003, L15
¹³¹ T379-380
¹³² T171, L26

destruction. She said:

"I just can't deal with death and destruction anymore, I've just done too much, I'm just not sleeping, I'm not coping. I just need to write about something good for a change."¹³³

109 She said this to the whole news desk, including Fergus Shiel, and about ten other people. As a result of this, she was transferred to sports reporting, but not before being directed to go to Kinglake to cover part of the Black Saturday bushfires.

110 In 2009, she wished to attend a news and conflict training course. She was initially told that she could go, but was then advised that it was only for news journalists and not sporting journalists.¹³⁴

111 Ms Elizabeth Minchin, another employee at *The Age*, gave evidence that she took time off in 2007 because of her own mental health. She was struggling to meet deadlines and cope with the pressure of the work she was doing.

112 At *The Age* Christmas party in 2007, YZ came and spoke to her at length about her struggles with her work, including a nasty lawsuit. She told Ms Minchin that unless things changed she may have to take some time off. Ms Minchin had further discussions with YZ when she was a Supreme Court reporter some years later, in 2010, 2011. Ms Minchin said that *The Age* was not a workplace where mental health issues were talked about. She said it was very much a culture of "get on with it".¹³⁵ When Ms Minchin returned to work in 2009, having been away from work with mental health issues, she said it was well known at *The Age* that she was having a mental health struggle and she said that there was no support for her, no processes in place. She said there was a system failure.¹³⁶

113 The plaintiff spoke to Mr Fuller the about a number of the high profile cases and

¹³³ T216, L9

¹³⁴ T234

¹³⁵ T609, L8

¹³⁶ T612, L1-8

the problems she was having during that time. He recalled discussing how difficult it was for her to cover those events.¹³⁷

What was the state of knowledge of the Defendant of the Plaintiff's symptoms and complaints from 2010 to 2013?

114 I am satisfied from the evidence of the plaintiff that she refused on at least two occasions to take up the position of Supreme Court reporter. She says she told Mr Baker that she had had enough death and destruction and did not want to return to it. The evidence of Mr McKinnon was that he probably would not have transferred her given her earlier complaints.

115 YZ said that sitting in court hearing evidence, watching re-enactments and looking at photographs of death scenes, was traumatic.

116 It was clear to Mr Shiel from a discussion he had with the plaintiff, that she was depressed, suffering nightmares from the Freeman case, not sleeping and having serious stomach issues.¹³⁸ She told Mr Fuller that the EAP was not of great assistance because of the time necessary to get an appointment.¹³⁹

117 Further, in 2011 and 2012, she received the telephone calls from people who were threatening suicide. She was frantic and exhausted after these telephone calls, and did not know how to deal with them. She told Mr Fuller about this, who agreed it would have been an awful matter to handle.¹⁴⁰

118 In relation to the Brother Best sentencing hearing, when she heard details of the rape of young boys, she was a "blubbering mess" at *The Age* office. No one made any enquiry as to her welfare.¹⁴¹

119 In January 2011, YZ spoke to the HR representative, Mr Gary Sepping, with Ms Minchin. YZ told him that the story she had written, which she described to Mr Sepping, was "not the worst of it". She told him nobody needs to read material

¹³⁷ T1139, L15-24
¹³⁸ Exhibit N
¹³⁹ T250, L6
¹⁴⁰ T258
¹⁴¹ T194

which was too awful, while having their breakfast.¹⁴² Mr Sepping promised a meeting, but that did not eventuate.

120 At a meeting with a news editor, Mr Mark Holden, around November 2012, I accept the plaintiff raised as an issue the lack of adequate welfare support for those journalists reporting on crime in courts.¹⁴³ When Mr Holden suggested the EAP, the plaintiff said that it was inadequate, as she could not get an immediate appointment.

121 She told various editors, including Mark Fuller, Fergus Shiel and Patrick Smithers, that in relation to the trials she was covering, the ones involving the death of children were those which affected her most.¹⁴⁴

122 YZ said that in December 2012, she spoke to Ms Carolyn Allen, an HR representative, about the abuse from a reader she had received after covering a murder story. She explained to Ms Allen that she was covering some “pretty awful stuff on a daily basis”¹⁴⁵ and was not receiving adequate welfare support or debriefing. Around that same time, she “snapped” at Dan Oakes in the newsroom, who described her as defensive and prickly. She said she was struggling to cope with the work and had been exposed to too many awful things. She was glad it was the end of the year so she could take a break.¹⁴⁶ Around March 2013, YZ was transferred to *The Sunday Age*.

123 In discussions with another young court reporter, Mr Adrian Lowe, YZ made it clear that she was having an experience similar to him; that is, not being able to cope with the confronting nature of the stories that were being reported.¹⁴⁷ Mr Lowe said that both he and YZ approached Mr Fuller and requested more counselling and greater support.¹⁴⁸ It took six months for Mr Lowe to be moved

142 T259
143 T272, L21
144 T275-276
145 T278, L20
146 T279-280
147 T928
148 T928

away from court reporting after his complaint.

124 The evidence of Mr Shiel was that the email he sent to Mr Ramadge¹⁴⁹ indicated the seriousness of the position. He sent it to the most senior person in the company as he was concerned to ensure the matter be taken seriously.¹⁵⁰

125 Ms O'Toole, in 2011, was sufficiently concerned about the condition of YZ that she went to Mr Baker, saying that YZ needed help and was not in a good way.¹⁵¹

126 YZ gave evidence about her coverage of the trial of Arthur Freeman. Given Darcey Freeman's murder was the final straw for YZ when she was a crime reporter, it is unsurprising the Arthur Freeman trial was, in her words, "incredibly difficult".¹⁵² Following the verdict, YZ spoke to *The Saturday Age* editor, Mr Steve Foley, who said he was not going to run her feature article because he could not read anything about the trial, it was too awful.¹⁵³ YZ responded "well try sitting through every single day of the trial having covered it when it happened" and then walked off.¹⁵⁴

127 In November 2012, YZ attended a meeting chaired by Mr Holden "in the wake of an apparently awful staff survey".¹⁵⁵ She said she raised concerns about the lack of welfare support for crime and court journalists. She said that the EAP was inadequate, because it took too much time to obtain an appointment.

Analysis – was the risk of psychiatric injury foreseeable in the circumstances of this case?

128 I am satisfied the risk of psychiatric injury to YZ was foreseeable to her employer, *The Age*. There are three bases for this conclusion:

- (a) the crime scenes, incidents and events she was required to investigate and report upon, both as a crime reporter from 2003 to 2009 and then as

¹⁴⁹ Exhibit N
¹⁵⁰ T1220-1221
¹⁵¹ T1006-1007
¹⁵² T242 L7
¹⁵³ T244, L5
¹⁵⁴ T244, L6-8
¹⁵⁵ T271, L26-27

a court reporter from 2010 to 2013, were of such a traumatic, violent and disturbing nature, that it would have been relatively obvious to a reasonable employer that the cumulative effect of that exposure would create the distinct risk of psychological injury in the nature of PTSD or a similar disorder;

- (b) *The Age* was on notice of that risk because of the various publications, articles and reviews to which I have referred, in particular Mr Caple's Risk Management Review, Professor Embleton's Peer Support Program, and the advice of senior managers or editors at *The Age*, Mr McKinnon, Mr Tippet and the DART Centre, of the risk of exposure to trauma and the need to take steps to prevent psychological injury;
- (c) I am satisfied that the plaintiff herself complained about and manifested real signs and symptoms of emotional distress on a sufficient number of occasions, both as a crime reporter and a court reporter, that it ought to have been relatively clear to her employer there were signs of the development of a psychological disorder.

129 At the time YZ commenced with *The Age* in 2003, she was twenty-seven years old. It was her first employment as a crime reporter. She was young and inexperienced. She received no training in how to deal with the trauma of the incidents she was required to report upon. The things she observed when she was required to cover a story were graphic and traumatic, being close to scenes where, in particular, children had been killed, often violently, would be obviously distressing. Seeing bodies being removed, undertaking "intrusions" upon families and neighbours and attending funerals brought with it distress and discomfort at such a level that it was no great leap of logic to conclude, if the matter was ever sensibly examined, that her distress would result in the development of a significant psychological injury.

130 As the authorities have noted, managers and editors in a workplace such as

The Age are not trained psychiatrists. They do not have the expert knowledge to detect the development of a psychological condition; however, in my view, there was no great expertise needed to understand that exposure of the plaintiff could result in something far more substantial than simply tears and stress after a particularly difficult story.

131 Of significance was the evidence that there was available to *The Age* of the risk of psychiatric injury as a result of being exposed to trauma, and the steps that ought be taken in that regard. Dr McMahon provided a copy of her pilot study to an editor of *The Age*. Mr Caple's risk management review made clear reference for the need for a peer support program with trained peers. Mr Tippet, in 2004, following his *Age* sponsored fellowship at the DART Centre in the United States, provided a report to *The Age* highlighting the psychological impact upon journalists of exposure to trauma and the symptoms which may arise.

132 Most significant of all was the evidence of Mr McKinnon. He was the very editor at *The Age* charged with the welfare of staff, including journalists. He was called on behalf of *The Age* and his evidence was clear:

- (a) as at 2002, he knew there was a risk that reporters who were exposed to trauma might suffer psychological injury;
- (b) the crime reporters were at the greatest risk;
- (c) notwithstanding he had been pressing for change for a considerable period, there was no formal peer support program put in place;
- (d) that should have been introduced as early as 2004;
- (e) it was not introduced because there was no appetite for change, and no funding available.

133 Finally, there were the signs, symptoms and complaints exhibited by the

plaintiff. YZ's evidence was that she was regularly in tears. She spoke to various editors at *The Age* on occasion and presented in a distressed manner. It was sufficient by 2008 or 2009 for it to be suggested she take a holiday. She said she made no secret of the fact that she was attending the EAP for counselling. By the time of the Darcey Freeman investigation, she made it clear she was no longer able to go on as she could not deal with the death and destruction.

134 YZ came to Ms O'Toole from time to time, upset and in tears.¹⁵⁶ She confided in Ms Minchin at the Christmas party in 2007. Ms O'Toole found her presentation such, and the situation sufficiently unacceptable, as to talk to Mark Baker about YZ.¹⁵⁷ I accept that meeting took place and that Ms Minchin said YZ was not in a good way and needed help.¹⁵⁸

135 YZ said she did not go about the office telling people that she was suffering symptoms of PTSD, but if, as I am satisfied occurred, she was exhausted, distressed and crying on a reasonably regular basis from her exposure to the trauma of reporting, it must have been obvious to management at *The Age* that something was wrong, more than an isolated emotional reaction to a traumatic story, but a clear indication of the emergence of symptoms of an underlying psychological disorder. True it was an emerging pattern of behavior, probably not patently obvious until the later years of her time as a crime reporter, but with the cumulative exposure to trauma, I am satisfied that by around 2007, the signs and symptoms were relatively obvious. They were not heeded. Things came to a head in 2009. Intervention ought to have occurred before that time.

136 As Ms Annesley points out, whether or not I accept these complaints were made by the plaintiff depends upon my assessment of her credibility, and that of the other witnesses called on behalf of *The Age*. Ms Annesley was critical of the credibility of the plaintiff and detailed, in her submissions, instances indicating

¹⁵⁶ T1019, L28

¹⁵⁷ T1015, L6

¹⁵⁸ T1007, L4

a lack of honesty and reliability.¹⁵⁹

137 In assessing the plaintiff's credibility, I note she was examined and cross-examined over a lengthy period, five or so days. She was regularly distressed and upset at recalling details of her investigations. She was pressed firmly, although fairly, in cross-examination on a range of issues. From time to time, she reacted aggressively and gave unresponsive answers. At times she was argumentative. Notwithstanding, I am satisfied that by and large she attempted to respond to the questions and gave honest answers in an emotionally charged environment. The manner in which she gave evidence was a reflection of the intensity of the feelings she had towards her time at *The Age* and the stress encountered in recalling the details of what she had observed.

138 Ms Annesley was critical of the credibility of the plaintiff, given her evidence on the following issues:

- The culture and male dominated atmosphere at *The Age*
- That she received little or no training
- The detail of trauma to which she said she was exposed in the Darcey Freeman case
- Her selective memory
- That on the one hand she presented symptoms to the news desk at *The Age*, and yet did not make complaints to those treating her
- Her evidence about being pressed by Mark Baker to take up the court reporting position
- Various other inconsistencies.

139 Generally, I do not accept that the matters to which Ms Annesley refers reflect

¹⁵⁹ Annexure A to the defendant's submissions

poorly on the credibility of the plaintiff. In my view, these criticisms fall away when the totality of the evidence on the various issues is considered.

140 The plaintiff said that she worked in a “blokey” environment at the news desk.¹⁶⁰ She said she was the only female for the majority of her working time at the news desk.¹⁶¹ She said it was not common for middle-aged men to be enquiring about a young woman’s welfare. When tackled on the issue in cross-examination, the only female journalist, amongst many suggested, who had worked in the crime area, was Selma Milovanovic.¹⁶² The plaintiff said in the early 2000s, she was the only female journalist working in the crime area.¹⁶³

141 Ms Minchin, who I found an impressive witness, was questioned as to whether the environment was collegiate.¹⁶⁴ She said *The Age* was not a workplace where matters such as depression and anxiety were talked about, whether among peers or superiors. She said it was very much a culture of “get on with it”. She was surprised at how many emails she received from co-employees after she took time off with her own issues, where they said they were also suffering depression.

142 Ms O’Toole, another impressive witness, said that when she complained to Mr Baker about her perception of YZ’s state of health, his response was that journalists were meant to be tough and hardy. She said she received an unsympathetic response from him.¹⁶⁵

143 I accept YZ sent an email to Mr McKinnon of 11 April 2011¹⁶⁶ saying that she was much refreshed after a holiday, and ready to return to work. She said she was amazed how many people had enquired about her welfare. I do not find what was said in the email inconsistent with a stressful and difficult environment

¹⁶⁰ T189, L31
¹⁶¹ T349, L26
¹⁶² T350, L6
¹⁶³ T350, L31
¹⁶⁴ T609
¹⁶⁵ T1016
¹⁶⁶ Exhibit 9

in which YZ said she worked. As she said, she was not broadcasting the fact that she had symptoms of PTSD. She was herself struggling to understand what was going on. It was a competitive environment where it was difficult to be open and frank about issues such as depression and anxiety. While Mr Lowe accepted colleagues asked how he was dealing with the trauma, they were journalists at his level, and not senior management.¹⁶⁷ He said he was never asked by an editor how he was coping. In any event, even when his colleagues asked, he said he was “fine”.¹⁶⁸

144 Mr Ramadge, an editor of *The Age*, accepted that the environment at the crime desk was stressful.¹⁶⁹

145 Mr Shiel said that people in particular teams cared for others in their team.¹⁷⁰ Again, however, there was no reference to editors or senior managers involved in that environment. He said the environment was stressful, and that the redundancies over the period were very difficult to deal with.¹⁷¹ Mr Shiel said it was not a macho environment, although there were “moments of macho-ness”.¹⁷²

146 I do not consider the evidence of the plaintiff about the culture of *The Age* reflects upon her credibility. I accept her evidence that in the crime reporting area there were few female journalists. The environment was stressful; deadlines had to be met. Financial resources were low and redundancies high. I accept generally, YZ got on well with her colleagues, and was able to work with and receive support from other journalists, in particular Mr Silvester and Mr Butcher. I accept the plaintiff was no “shrinking violet”. She was a capable and forthright journalist, prepared to express an opinion and state her views. That does not mean, however, she could approach senior people at *The Age* and

¹⁶⁷ T946, L13
¹⁶⁸ T946
¹⁶⁹ T1181, L12
¹⁷⁰ T1214
¹⁷¹ T1215
¹⁷² T1224, L19

frankly say that she was not coping with the trauma of the work. I do not accept the various issues raised by the defendant under the heading “Gender of the Plaintiff”.¹⁷³

147 The next matter raised by Ms Annesley as to credit is the plaintiff’s evidence that she received little training. I accept her evidence that aside from one day of a two-day course early in her career relating to trauma and journalism, she received little if any other training. Even in respect of that course, I accept the part of the course most applicable to dealing with trauma was on the second day and that she was unable to attend as she was told to attend a murder scene. An earlier statement, made in January 2014,¹⁷⁴ suggesting an inconsistency between what was said in the statement and her evidence, is of little moment. Likewise, a suggested inconsistent answer to an interrogatory.¹⁷⁵

148 The defendant points to the evidence of the plaintiff in relation to attending the scene of Darcey Freeman’s murder as affecting her credit. It was suggested that the plaintiff’s evidence in that regard was “sensationalised”. The suggested inconsistencies between her evidence, and the histories given to Dr Doherty and Dr Lewis, are of little significance. A number of witnesses commented upon the effect upon them, and indeed the community generally, of the death of that child. I did not find the plaintiff’s evidence as to the effect upon her of attending the scene as sensationalised, nor did I find it inconsistent with the medical histories.

149 Ms Annesley was critical of the plaintiff’s capacity to recall matters, suggesting she had a selective memory. I did not find any of the matters raised of significance. Likewise, the suggestion that there was an inconsistency in the evidence of the plaintiff about the symptoms she was suffering, and what she reported to the EAP. She made clear reference in November 2007 to not being able to keep going with her work relating to crime and death, although accepting

¹⁷³ Annexure A to the defendant’s submissions, paragraphs 9-15

¹⁷⁴ Exhibit 1

¹⁷⁵ Exhibit 2

that she had a “good capacity to carry a heavy load”.¹⁷⁶ At the same time, she was clearly having relationship problems.

150 I accept the plaintiff, on a fairly regular basis, presented at work upset and in tears. I did not find any inconsistency between that evidence, and the clinical notes of the psychologist, Dr Phelps. Clinical notes do not record everything that is said in the course of an interview. I accept the plaintiff’s evidence that she was not telling people at work that she had symptoms of anxiety or depression.

151 As Ms Annesley points out, there is a dispute upon the evidence as to whether Mr Baker forced or pressed the plaintiff to take up work as a Supreme Court reporter in early 2010. The plaintiff said that she was requested on three occasions by Mr Baker to take up the role as Supreme Court reporter.¹⁷⁷ On the third occasion, she was persuaded to take the work, and as an incentive, was offered a pay rise. She said she was shocked as she had made it abundantly clear she did not want to go back to that area of reporting. Mr Baker had a limited recollection of those conversations. His impression, he said, was that she was reluctant to move but was persuaded to do so in the end, and was willing to do the work.¹⁷⁸ At the end of the day, I do not see a great deal of difference between the evidence of the plaintiff and Mr Baker. I accept her evidence that she was approached on three occasions and was reluctant to move. I accept that she did so in the end but only after “persuasion” by Mr Baker, with the incentive of a pay rise. I do not accept her evidence in this regard reflects upon her credit.

152 Under the heading “Other Examples”, it was suggested there were various other aspects of the evidence of the plaintiff which indicate a lack of frankness. I do not accept those matters affect the plaintiff’s credibility.

¹⁷⁶ Exhibit 10, page 1

¹⁷⁷ T235-238

¹⁷⁸ T1256-1257

153 Setting aside the medical evidence, I generally found all of the witnesses, both for the plaintiff and defendant, impressive. Many of the senior editors of *The Age*, called on its behalf, gave evidence and quite honestly admitted they did not have a recollection of aspects of the plaintiff's presentation, complaints and signs expressed in the course of her work. I accept that generally, they were attempting to give a full account of their recollection of events, now many years ago.

154 I found the plaintiff giving an honest account of her circumstances, the work she was required to report upon and the emotional reaction to that work. To the extent that she was, on occasions in cross-examination, argumentative, distressed and over-reactive, is a measure of the psychological disorder from which she is suffering, rather than lack of honesty or reliability.

What was the scope of the duty of care owed by *The Age* and what measures could have been taken to avoid injury?

155 Some of the principles extracted from the authorities to which I have referred, on the issue of foreseeability, are applicable to the scope and content of the duty of care.

156 The starting point, in respect of a psychiatric injury claim, requires an analysis of the work being undertaken and the obligations owed by an employer to an employee and *vica versa*. As was said in *Koehler*:¹⁷⁹

"The content of the duty which an employer owes an employee to take reasonable care to avoid psychiatric injury cannot be considered without taking account of the obligations which the parties owe one another under the contract of employment, the obligations arising from that relationship which equity would enforce and, of course, any applicable statutory provisions. ... At least the following questions are raised by the contention that an employer's duty may require the employer to modify the employee's work. Is an employer bound to engage additional workers to help a distressed employee? If a contract of employment stipulates the work which an employee is to be paid to do, may the employee's pay be reduced if the employee's work is reduced in order to avoid the risk of psychiatric injury? What is the employer to do if the employee does not wish to vary the contract of employment? Do different questions arise in cases where an employee's duties are fixed in a contract of employment from those that arise where an employee's duties can be varied by mutual agreement or at the will of the employer? If an employee is known to be

¹⁷⁹ (Supra) at paragraphs [221]-[222]

at risk of psychiatric injury, may the employer dismiss the employee rather than continue to run that risk? Would dismissing the employee contravene general anti-discrimination legislation?

No doubt other questions may arise. It is, however, neither necessary nor appropriate to attempt to identify all of the questions that could arise or to attempt to provide universal answers to them. What is important is that questions of the content of the duty of care, and what satisfaction of that duty may require, are not to be examined without considering the other obligations which exist between the parties.”

157 In *Johnson v Box Hill Institute of TAFE*,¹⁸⁰ J Forrest J, in a bullying and harassment case, noted the decision in *Koehler*¹⁸¹ was the leading authority on whether a duty of care was owed to the plaintiff. He extracted the following principles:

- “(a) Where a proceeding is grounded in psychiatric injury arising out of the carrying out of work duties, careful analysis of the content of the duty of care is required before questions of breach are considered.
- (b) Reasonable foreseeability of psychiatric injury to the particular employee alone is not sufficient to enliven the duty of care.
- (c) Other relevant considerations as to whether a duty of care is enlivened include:
 - the contract of employment and obligations arising from it; and
 - evident signs of an employee’s inability to carry out work activities associated with the risk of psychiatric injury.
- (d) Absent those evident signs ‘warning of the possibility of psychiatric injury’, the employer is entitled to assume that the employee is capable of performing his or her job.”

158 In *Larner v George Weston Foods Ltd*,¹⁸² the Victorian Court of Appeal said:

“The factors that are most likely to be relevant in determining the content of the duty of care, and what is required of an employer to satisfy the duty of care it owes, include both the nature and extent of the work being done by the particular employee; ‘and the signs from the employee concerned — whether in the form of express warnings or the implicit warning that may come from frequent or prolonged absences that are uncharacteristic’.

An employee’s agreement to perform those very duties which are later found to be a cause of psychiatric injury may be of considerable significance in determining whether an employer has breached its duty of care. As the High Court said:

‘An employer may not be liable for psychiatric injury to an employee

¹⁸⁰ (*Supra*) at paragraph [406]

¹⁸¹ *Supra*

¹⁸² [2014] VSCA 62 at paragraphs [205]–[207]

brought about by the employee's performance of the duties originally stipulated in the contract of employment. In such a case, notions of 'overwork', 'excessive work' or the like have meaning only if they appeal to some external standard. ... Insistence upon performance of a contract cannot be in breach of a duty of care.'

An employer's obligations under a contract are not to be read subject to a duty to excuse performance if performance is injurious to psychological health, nor to be qualified by hindsight. In the absence of warning signs, an employer can assume that someone who enters into a contract of employment believes himself or herself to be capable of performing its duties"

159 In submissions,¹⁸³ Mr Tobin said the duty owed by the defendant was one which required proactive as well as reactive steps to be taken. Not only should *The Age* have reacted to the signs and symptoms the plaintiff exhibited, but its senior managers and editors ought to have, given the knowledge they had, the advice they received and the nature of the work itself, taken proactive steps to protect the plaintiff against the risk of injury. I accept that submission. In my assessment, it accords with principles laid down by the High Court in *Liftronic Pty Limited v Unver*.¹⁸⁴

"... The appellant, on the other hand, as employer, bore a heavy responsibility to devise institute and enforce safe place of work, and safe system of work, so as to avoid exposing workers, such as the respondent, to unnecessary or unreasonable risks. This was a duty personal to the employer. The ultimate legal responsibility for its fulfilment could not be delegated. In this sense, explaining the standard of care expected of an employer in terms of the conduct of the 'the reasonable person' may have understated the very heavy duties that the law in Australia casts on an employer. Such duties include affirmative attention to the issue of accident prevention. So much was held by this Court in *McLean v Tedman* and re-affirmed in *Bankstown Foundry Pty Ltd v Braistiner*."¹⁸⁵

160 The starting point, accepting the defendant owed YZ a duty to take reasonable steps against the reasonable risks of foreseeable psychiatric injury, is an assessment of the steps which were taken by *The Age*. These included:

- The establishment of the EAP which was available to the plaintiff at an early time in her employment, which was relatively well known within *The Age* and provided counselling and advice from trained counsellors to those

183 T1316
184 [2001] HCA 24
185 at paragraph [85]

reporters with psychological issues arising from with their employment or personal lives.

- There was, amongst reporters in the Law and Justice sector, more senior reporters and colleagues to whom the plaintiff could go to have an informal discussion if she became distressed with the material she was reporting; however, as I have discussed, there were limits to this informal peer support program (if indeed it was a program), because *The Age* was not a place where it was easy, particularly for younger reporters, to disclose such issues in an open and frank manner.
- There were various training courses undertaken by *The Age*, including:
 - A “News and Conflict” conducted by the Belkin Group over two days. The plaintiff attended the first day of the course but was directed to undertake other work on the second day which was the day designated to discuss exposure by journalists to trauma.
 - “Peer Support Program Workshop” conducted by Embleton and Hippocrates in 2002.
 - “Risk Management for Editors” conducted by the Belkin Group in October 2009, December 2010 and November 2011.
 - “Managing Trauma for Editors” conducted by the Belkin Group in November 2009 and December 2001.
 - “News in Conflict” conducted by the Belkin Group on various dates between 2005 and 2011.
 - “Leadership in Times of Trauma Exposure” conducted by DART in December 2011.
 - “Building Mental Fitness in the Face of Trauma Exposure” conducted by DART in 2013.

161 The difficulty with these courses was that the plaintiff attended only one half of the course on News and Conflict, and was not able to attend any others despite being keen to do so. What was further significant was that of the various senior employees and editors of *The Age* who gave evidence, few had undertaken these courses¹⁸⁶ and even if they had, the recommendations made by Messrs McKinnon, Tippet, Embleton and Caple were either not part of the courses, or, if they were, were not acted upon.

162 In the circumstances of this case, I am satisfied the following steps ought to have been taken by *The Age* to protect the plaintiff against the risk of psychological injury:

(a) There ought to have been training and instruction to all new journalists and cadets, particularly those young and less experienced, as to the nature of the trauma, suffering and distress to which they were likely to be exposed, in the plaintiff's case, as a crime and court reporter. That would then arm the employees with the knowledge of what the work involved and whether that was a part they wished to pursue in their journalistic careers. The training ought also to have included a checklist of signs and symptoms which might commonly arise when exposed to trauma, including tearfulness, distress, nightmares, sleeplessness, abuse of alcohol and the like. The instruction ought to have included advice as to what to do when such signs and symptoms occurred. In that regard, I accept the evidence of the plaintiff that while she knew there was something wrong, she thought she would be able to get over it and did not understand what was happening to her was the development of a PTSD;

(b) Likewise, there ought to have been more comprehensive training of senior staff in trauma awareness and the ability to detect symptoms in the reporters who worked in the area. Aside perhaps from Mr Tippet and Mr McKinnon, there were no other senior editors at *The Age* who saw

¹⁸⁶ See Exhibit AE as to those senior managers and editors who were said to attend

themselves capable of providing assistance to employees exposed to trauma, and detecting symptoms. Editors at *The Age*, in particular at the Law and Justice news desk, ought to have had such training and on a regular basis;

- (c) There ought to have been a recognition from the literature to which I have referred of the risk of the development of psychological injury from exposure to trauma. Very few of the senior editors who gave evidence, with the possible exception of Mr McKinnon and Mr Tippet, had an good understanding of the risks referred to in the literature;
- (d) Attention ought to have been paid to the Risk Management Review undertaken by Mr David Caple at the behest of *The Age* which suggested a peer support program which involved trained volunteers to debrief journalists, along with the service provided by psychologists. A similar recommendation arose out of the work of Professor Embleton, also through a workshop undertaken by *The Age*. He suggested a peer support process with trained peer supporters. Most tellingly, attention ought to have been paid to the advice of Mr McKinnon, perhaps the person in the best position at *The Age* with his experience of exposure to trauma. He said an appropriate peer support program ought to have been implemented through the DART group and Dr McMahon on a regular basis, several times per year. Volunteers (or perhaps others) from within the organisation, carefully trained to appreciate the risk and recognise the symptoms, ought to have been readily available to talk to journalists. I am satisfied from the evidence that this was not undertaken because there was no appetite for change, and no funding available;
- (e) The training courses to which I have referred ought to, both in respect of journalists at the coalface, and editors, include advice and training about how to deal with "intrusions". There ought to have been boundaries set as to how journalists were to go about the task, a debriefing available for

those who engaged in that conduct, and how to deal with the associated distress which may result. Further, in relation to her dealings with known crime figures, there ought to have been boundaries set as to how those persons were to be approached and dealt with, and debriefing available afterwards. None of these steps were taken;

- (f) While the EAP was of benefit, and involved trained psychologists, I accept the criticism of that program from the plaintiff that she was not able to obtain immediate assistance. The trauma to which she was exposed was so immediate and confronting that it was quite unsatisfactory to have to wait a number of weeks before being able to sit down with someone to talk about it. There ought to have been a program so that journalists in her position could access trained professionals immediately and without delay. Further, as Ms Minchin said,¹⁸⁷ it was an employer funded service, and in a competitive atmosphere, it was not easy to make talk openly. Confidentiality was also an issue;
- (g) Given Mr McKinnon's knowledge of the programs available at the BBC and the ABC, consideration ought to have been undertaken to assess those programs and, given their apparent success, implement them at *The Age*;
- (h) I am satisfied that the culture at *The Age* was such that the reporting of psychological symptoms and distress was not encouraged. This was for a number of reasons. No doubt, it was a competitive environment and a stressful workplace. To express symptoms, of for example anxiety or depression, was likely to be seen as a weakness and an indication an employee was not able to carry out the assigned work. In an environment where redundancies were a regular event, it was not an easy thing to be open and frank about the trauma to which younger journalists were exposed and their reaction to it. I accept the evidence of Ms Minchin that

¹⁸⁷

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the advice she received to take a walk around the block and get on with it, reflected the atmosphere in the newsroom.¹⁸⁸ There ought to have been steps taken to change this culture. The environment ought to have been one where, led by senior editors and management, there was an encouragement to talk about the tragedy and trauma and the risk of the onset of symptoms. That was not done;

- (i) When a reporter such as the plaintiff did complain of symptoms, including distress and tearfulness, careful consideration ought to have been given to removing her from the trauma. It would no doubt be a delicate discussion to have, protecting, on the one hand, the employee's right to privacy and to advance in her employment, and on the other hand, to ensure an employee's psychological wellbeing was not protected. Nonetheless, I am satisfied careful management, perhaps with the assistance of trained professionals, would have assisted. The issue of rotating of reporting duties is not straightforward. A reporter might be committed and passionate about a particular area, as was the plaintiff in respect of crime reporting, at least in her early years. There should have been a clear policy, made known to reporters at *The Age*, that if a person was finding difficulty or suffering distress as a result of the exposure to graphic investigations and reporting, management would be sympathetic to the person being transferred to another area, and within a reasonable time.¹⁸⁹ The evidence varied as to whether a reporter in the shoes of YZ could apply to be successfully transferred. On balance I accept that the decision to transfer a reporter was run more by availability of positions than it was to do with the welfare of the journalist. That became clearly obvious when the plaintiff was persuaded to resume court reporting in 2010;
- (j) In respect of the plaintiff's work as a court reporter from 2010 to 2013, the circumstances were clear. She ought never to have been transferred to

¹⁸⁸ T582, 598

¹⁸⁹ It took six months for Mr Lowe to be transferred out of crime reporting after first reporting his distress

that area, given her previously expressed inability to deal with the material she was exposed to as a crime reporter. She had to be persuaded several times to return to court reporting. I am satisfied the reason for that was to do with the fact that Ms Hagan was leaving, and a reporter with sufficient experience was needed to fill the role. Little, if any, regard was paid to her welfare.

Was there a breach of the duty such as to cause injury?

163 I am satisfied that in the circumstances, the nature and extent of the duty of care required the defendant to take the steps referred to above. Those steps were not taken. Accordingly, there was a breach of the duty of care owed by the defendant against the risk of foreseeable injury. The question then is whether that breach was causative of the psychological injury I am satisfied the plaintiff suffered.

164 The defendant contends that if there was a breach, it was not causative of injury. It says:

- There was no evidence that a formal peer support system, with trained persons involved, would have made any significant difference.¹⁹⁰ The plaintiff was able to access the EAP or her own doctors as she needed.
- By November 2011 when the defendant was clearly on notice of the plaintiff's psychiatric symptoms, she had not established that peer support, or the other interventions said to be available, would have made any difference to her condition when she was a court reporter.
- The records of EAP, and the various health practitioners that she attended, would indicate the plaintiff disclosed few if any symptoms which were related to her work and those were, at best, transitory. Had there been intervention under a peer support program or by training, at best it would have resulted in the plaintiff being referred for treatment, which she

¹⁹⁰ See evidence of Dr Cait McMahon T840, L3

received in any event. It would not have altered the outcome.

- There were other causative factors at play, including a breakdown of various relationships, the defamation proceedings, retrenchments and “life issues counselling”. By December 2011, the EAP notes record the plaintiff was feeling much better after a holiday and was keen to get back to work.
- The clinical notes of Dr Phelps record that by March 2013, YZ’s symptoms had largely abated.

165 I will start by considering the plaintiff’s time as a court reporter from 2011 to 2013. I am satisfied from the medical evidence which I will shortly examine that because of the trials and sentence hearings she was required to observe and report upon, they contributed to the PTSD she suffered. The causative issue in respect of that period of employment is simple. She should never have been requested, let alone persuaded, to undertake work as a court reporter given her complaints to *The Age* after the Darcey Freeman incident.

166 I am satisfied that by April 2010, when the plaintiff commenced work as a court reporter, the PTSD was entrenched, although the symptoms fluctuated. Not unsurprisingly, by 2013, she was simply unable to continue in the work because of her reaction to the trauma, and took a redundancy package.

167 In relation to the various other stressors in the plaintiff’s life, I am not satisfied the various relationship breakups she endured were a causative factor in the development of PTSD. Likewise, the defamation proceeding, or being named in the IBAC Inquiry. I will analyse these when I examine the medical opinions; likewise, the “life issues” referred to in the clinical notes. I am satisfied the nightmares and flashbacks she has suffered over the years are directly related to her exposure to traumatic reporting.

168 According to the evidence of Dr McMahon, which I accept, it is the cumulative effect of exposure to traumatic events which causes the risk of psychological

injury.¹⁹¹

169 I accept the evidence of Dr McMahon that research would indicate a significant number of journalists who experience and report upon traumatic events, in the order of 33 per cent, have probable PTSD.¹⁹² She detailed the symptoms relating to such exposure to include depression, substance misuse, somatic complaints and burnout. Symptoms of nervousness, anger, high distress, irritability and tearfulness were also observed and identified.¹⁹³ According to Dr McMahon's report:

"The research states that retriggering by further trauma exposure following prior trauma exposure to be psychologically harmful."¹⁹⁴

170 Further:

"... lack of perceived management support correlates with higher levels of PTSD and an exacerbation of symptoms that are already present."¹⁹⁵

171 Although she said:

"... Management intervention to these requests may have minimized an escalation of PTSD symptomology."¹⁹⁶

(emphasis added).

172 Dr McMahon reported that given the rotation to the sports desk was successful at alleviating her symptoms, remaining in that role would no doubt have been beneficial to her mental wellbeing. The report concluded:

"It would seem from ... [the plaintiff's] reports and those of her treating practitioners that The Age could have intervened and supported ... [the plaintiff] at numerous points. According to the research presented above, appropriate and ongoing management and organisational support, as well as a lessening of overall stressors, continued rotation to non-trauma assignments, referral and follow-up to psychological support may have mitigated the impact and escalation of trauma symptoms reported by ... [the plaintiff]."¹⁹⁷

¹⁹¹ T734-735; T748-749

¹⁹² Report of Dr McMahon, exhibit H, page 2

¹⁹³ Exhibit H, page 3

¹⁹⁴ Exhibit H, page 21

¹⁹⁵ Exhibit H, page 21

¹⁹⁶ Exhibit H, page 22

¹⁹⁷ Exhibit H, page 22

(emphasis added).

173 Dr McMahon was asked:

Q: "Your study showed that, I suggest, as you identified in your paper, that there was a relationship between trauma but it was not sufficient to be suggestive of causation, do you agree with that?---

A: That's right, unless one does sit down clinical interviews with someone, we are not allowed to say that that is the causation. You can say it is potentially probable, but unless it is clinical interviews it would be unethical to say so."¹⁹⁸

174 Dr McMahon was questioned about the fact that YZ undertook counselling under the EAP, and was referred to her general practitioner and an independent psychologist, and even if there had been a formal peer support program in place, it would have achieved nothing as at best, had her symptoms and signs been identified, she would have been referred to those same institutions. She said:

"Well, we really don't know about that, ..., because there wasn't a peer support program active, it's possible that would have been the type of organisational support we know is imperative in these situations.

...

Yes, but we also have a person as far as I can recall from – from the affidavit, we have a person that sought that help but also was being put into further harm by the actions of being put back into the workplace situation that was exposing her to more trauma."¹⁹⁹

175 Dr McMahon commented that although after her holiday in New Zealand in 2012, the plaintiff returned and sent an email to Mr McKinnon in which she said that her holiday had refreshed her and that she was happy to return and hear the Freeman sentence,²⁰⁰ that was only one event. It was the accumulation which erodes a person's resilience over time.²⁰¹ When it was put to Dr McMahon that given the plaintiff had received psychological assistance to that point, that there was nothing further the employer could have done, she said that there should have been a reduction in her exposure to trauma.²⁰² Dr

¹⁹⁸ T776, L14
¹⁹⁹ T825, L13
²⁰⁰ T827, L10
²⁰¹ T828, L13
²⁰² T829, L1

McMahon accepted that there was no one single workplace program to enhance resilience or mitigate the effect of PTSD; however, she said that it was a combination of strategies and programs that would be the most effective.²⁰³ She said rotation should be considered, follow up support, as well as a formal peer support program.

176 It is clear from the email from Mr Shiel to Mr Ramadge of 24 November 2011 that the plaintiff was suffering, as a result of the Darcey Freeman case, from a range of significant psychological symptoms, including depression, nightmares, lack of sleep and serious stomach issues, as well as feeling unappreciated at work. In addition to the fact that she ought not to have been sent to the Supreme Court, this email was clear evidence that things had taken a significant turn. Dr McMahon described this, and various other complaints made and symptoms exhibited as being “red flag opportunities”.²⁰⁴

177 Dr McMahon said that once it was identified a journalist had negative effects from exposure to stress, there were a range of steps which ought to have been taken, including the manager or editor checking regularly as to the person’s wellbeing, and checking that clinicians were involved. In conjunction with the treating practitioners, a plan ought to be undertaken as to how the person should be managed in the workplace.

178 The position in respect to causation was succinctly stated by the Full Court of the Supreme Court of South Australia in *BHP Billiton Ltd v Hamilton & Anor*:²⁰⁵

“At common law, establishing merely that it is possible that the defendant’s conduct was a cause of (or materially contributed to) the disease or injury is insufficient: it must be proved in accordance with the civil onus that it is probable that the defendant’s conduct was a cause of (or materially contributed to) the plaintiff’s disease or illness. There is also a distinction between a mere prospective risk that the defendant’s conduct might cause injury to the plaintiff and the possibility or probability that the defendant’s conduct assessed in retrospect did in fact cause the injury suffered by the plaintiff. This is not to say that, as an evidentiary matter, proof of risk of injury coupled with other circumstances may not be

203 T840
204 T848, L8

205 (2013) 117 SASR 329 at paragraph [61] – referring to *Amaca Pty Ltd v Ellis* (2010) 240 CLR 111

sufficient to prove causation on the balance of probabilities.”

179 Were I to rely solely upon the evidence of Dr McMahon, her evidence that the introduction of formal peer support and training may have obviated the risk of injury, would not be sufficient to meet the burden the civil law requires as to the causative relationship between breach and injury.

180 The High Court has emphasised the application of the “but for” test. The Court, in *Adeels Palace Pty Ltd v Moubarak*,²⁰⁶ was concerned with patrons of a licensed restaurant who were shot by a disgruntled customer returning to the restaurant in the early hours of the morning where there was no security personnel present. On behalf of the plaintiffs, it was said that had there been additional security officers present and on duty, the shooter would have been deterred. The Court said:

“In the present case, in contrast, the ‘but for’ test of factual causation was not established. It was not shown to be more probable than not that, but for the absence of security personnel (whether at the door or even on the floor of the restaurant), the shootings would not have taken place. That is, the absence of security personnel at Adeels Palace on the night the plaintiffs were shot was not a necessary condition of their being shot. Because the absence of security personnel was not a necessary condition of the occurrence of the harm to either plaintiff, s 5D(1) was not satisfied.

...”

181 The Court has said that what was required was an examination of the practical steps which could have been taken to prevent the assault and then asking whether, on the balance of probabilities, such steps would have prevented the shootings taking place.

182 However, the test is a question of fact which should be applied by reference to commonsense and experience. It must involve the application of value judgments.²⁰⁷

183 In the much quoted passage from *March v Stramare (E and MH) Pty Ltd*,²⁰⁸ the

²⁰⁶ (2009) 239 CLR 420 at paragraph [53]

²⁰⁷ *ACQ Pty Limited v Cook & Anor* [2009] 258 ALR 58 at paragraph [25]

²⁰⁸ [1991] 171 CLR 506 at 514

High Court said:

“...Generally speaking, that causal connection is established if it appears that the plaintiff would not have sustained his or her injuries had the defendant not been negligent.”

184 Applying these principles, it is necessary to consider whether, had the steps to which I have referred been taken by the defendant, the plaintiff would have suffered psychological injury. Put another way, “but for” the defendant’s breach of duty, the plaintiff would not have suffered psychological injury. The steps I am satisfied the defendant ought to have taken may be summarised as:

- Training of the plaintiff, both at the outset and on an ongoing basis.
- Training of editors and senior managers to identify the symptoms which may indicate psychological injury.
- Implementation of a formal peer support program involving reporters and others trained to detect signs and symptoms which may indicate the development of psychological injury, and implemented on a number of occasions each year.
- Protocols and instructions to deal with “intrusions” and crime figures.
- An expanded program in the nature of EAP but with the immediate ability to debrief with a trained professional.
- Steps should have been taken to change the culture at *The Age* so as to make it clear it was quite appropriate to talk openly about symptoms and signs such as depression, anxiety and stress.
- Making it clear to reporters they had the option to change, where reasonably practicable, to another area of reporting if they felt the trauma associated with the work became too much.
- If necessary, removing the reporter from the area of trauma to which he or she was exposed.

185 I am satisfied, taking a commonsense and practical approach to the question of causation, that had these steps been implemented, it was more probable than not that the plaintiff would not have suffered injury.

186 Had these steps been taken, then at the outset, with appropriate training, and the implementation of a formal peer support system, the plaintiff would have been aware that exposure to the sort of trauma she was likely to encounter as a crime reporter may lead to the development of psychological injury. Had she known, through proper training and advice, she could have taken steps at an earlier time either to move into another area, or to seek treatment from a health professional experienced in that area. Alternatively, trained peers, had they been available on a regular basis, could have identified that her tearfulness and distress was a harbinger of the development of psychological injury. Thus, again, allowing understanding and early treatment.

187 Likewise, early identification, either by the plaintiff, or trained peers, would, at the very least, have resulted in an offer for her to move to another area or, if her symptoms were sufficiently severe, for that to be a requirement. If proper protocols and boundaries were set in respect of "intrusion" and dealing with criminal elements, that would have resulted in less stress and concern to the plaintiff in how to deal with them. Further, a changed environment, more sympathetic to those who are struggling with emotional issues, would have encouraged early identification and treatment.

188 While it is impossible to say with certainty that even with all these steps put in place at *The Age* the plaintiff would not have suffered the exposure to the trauma as she did and thus suffered psychological injury, I am of the view, on the balance of probabilities, that while she may have suffered some distress or emotional reaction, that would not have developed into the PTSD that she suffers from today.

189 In these circumstances, I am satisfied that the defendant's breach of duty was

causatively related to her injury.

Was the Plaintiff contributorily negligent?

190 The defendant submits contributory negligence arises if the Court is satisfied the plaintiff was aware of her condition and failed to take appropriate action in the circumstances. Ms Annesley contended it was not open to the defendant, because of the nature of psychological injury, to detect or observe symptoms or signs, as would be the case with physical injury.

191 If the plaintiff was aware of her condition and earlier intervention would have made a difference to the outcome, then the defendant submits the plaintiff ought accept some responsibility for her failure to take action. She could have sought a rotation of duties, or left employment. There are alternative duties either at *The Age* or some other media outlet. In the circumstances, the defendant submits contributory negligence ought to be assessed to at least 50 per cent.

192 The conditions under which an employee has to do his or her work should be taken into account. The question in respect of contributory negligence is whether, in those circumstances and under those conditions, the conduct of the worker amounted to a breach of the duty to take reasonable care for his or her own safety or, on the other hand, to mere inadvertence, inattention or misjudgment.²⁰⁹

193 When YZ was questioned about entries in the clinical notes of Ms Mott around 2009, it was suggested that she was presenting in a different way at work to the complaints she was making to that practitioner. Her response was:

“Well, I wasn’t running around telling everyone, ‘I’ve got PTSD’, I wasn’t doing that. I’m not saying that I did advertise my condition. I tried so hard to get better, I thought there was something wrong with me, I thought, you know, how come these people can do it for years on end and, you know, seem to be relatively okay? Why am I so weak, why am I not coping?”²¹⁰

194 It is clear from this passage of evidence that at the time, while the plaintiff was aware that she was suffering some distressing problems, including tearfulness,

²⁰⁹ *Podrebersek v Australian Iron and Steel Pty Limited* (1985) 59 ALR 529

²¹⁰ T512, L19-26

difficulty with sleep, nightmares and abuse of alcohol, she was unaware that this was a sign of the development of PTSD. She was trying to understand the symptoms and trying to work out why they were affecting her. I am satisfied the plaintiff did not know she was suffering from a diagnosable psychiatric illness which had developed as a result of the cumulative exposure to trauma in her reporting.

195 I accept the evidence of the plaintiff and other witnesses, that it was no easy matter to apply to be rostered into another area at *The Age*. While there were no fixed rules stating that one could not apply to be transferred, nonetheless, in an environment where redundancies were regular occurrences, it would be no easy matter for a reporter to say they wanted to move to another area.

196 In these circumstances, I am of the view that no blame can be attributed to the plaintiff for failing to take earlier or better steps to obtain treatment from the condition from which she was suffering. While earlier intervention, either by trained peers or health professionals would have made a difference to the outcome of her condition, the plaintiff cannot be blamed for failing to take those steps.

197 There should be no reduction in damages for contributory negligence.

In what sum is it appropriate to assess the Plaintiff's pain and suffering damages?

198 The claim is for pain and suffering damages only. There is no claim for economic loss. Mr Tobin submits an appropriate assessment is \$250,000. Ms Annesley submits damages ought to be assessed in the \$10,000's, and no more than \$50,000.

199 The plaintiff gave evidence about the symptoms she suffered and the effect upon her. Over her time as a crime reporter from 2003 to 2009, she said she attended thirty-two murder scenes. Over the years she began to feel stressed at the crime scenes she attended, particularly those involving children. Around 2007, I accept that she was regularly in tears and distressed at work. I accept

that she started to suffer nightmares and flashbacks relating to the work she was reporting upon. I further accept that she was distressed at times from “intrusions”. I accept her evidence that prior to starting work at *The Age*, she was a social drinker, but as time passed, and with the development of nightmares, she began to drink more in order to get to sleep, up to one to two bottles of wine a night. I accept her evidence that she had some time off work here and there, although it was not always recorded as sick leave.

200 I accept her sleep was affected and she found it difficult to cope with the work, although was able to meet deadlines and produce well written articles. In 2007, when she first attended EAP, I accept she was exhausted and drained, and not sleeping well. I accept her evidence that she would awake, sweating and crying. Her emotions began to change and she developed a short fuse. By 2009, after reporting on the Darcey Freeman murder, she got to the point, psychologically, that she could no longer cope with the work.

201 I accept her evidence that in her time as a sports journalist, she enjoyed the work, and was good at it. After she was “persuaded” to take up work as a court reporter, I accept her symptoms resumed. She was stressed, had difficulty sleeping, was drinking a lot and suffered nightmares, which were directly related to the trials upon which she was reporting. She suffered these symptoms, albeit, completing her work and, in fact, in 2011, being presented with awards for journalism on a number of occasions.

202 The clinical notes of her various treating practitioners do not record regular complaints of stress, exposure to trauma or the other symptoms from which she was suffering. This was for a combination of reasons. Firstly, she was attempting to deal with what was going on and did not understand the nature of the psychological condition from which she was suffering. Further, the atmosphere at *The Age* was not conducive to the disclosure of such symptoms and consequently, YZ was reluctant to make much of it, or even to her treating practitioners. Further, the clinical notes do not always record all that is said.

- 203 I accept that in approximately February 2013, while working as a Supreme Court reporter, YZ felt dizzy and nauseous, with a racing heart. She had panic attacks on a number of occasions over the previous twelve months. She told Mr Oakes that she could no longer work as a court reporter, returned to the office and broke into tears. She was subsequently transferred to the *Sunday Age*. YZ remained as a reporter for the *Sunday Age* from March to November 2013. Towards the end of that time, she was sent to the scene of the death of a young man who had fallen from a roof while sleepwalking. I accept this incident was sufficient to prompt her to apply for a voluntary redundancy.
- 204 In the course of cross-examination, a number of performance appraisals carried out in 2009 and 2010 were put to the plaintiff.²¹¹ There was no reference in those appraisals to any complaints about the symptoms from which she was suffering nor the work she did. I accept her evidence that, again, given the environment at *The Age*, it was quite understandable she would not disclose the problems she was suffering in the course of those appraisals. In the Supreme Court work she said she reported on thirteen murder trials. She also attended a number of funerals, which she found distressing.
- 205 In early 2013, YZ commenced a course at the University of Melbourne, undertaking a Masters in Criminology on a part-time basis. The course involved a number of theses, for which she received high marks. She continued the course, part time, through until 2017.²¹²
- 206 In 2013, she commenced a new relationship with her current partner, and they have a son together, born in 2018.
- 207 The nature of her condition was such that the symptoms fluctuated. On some occasions in 2013, she complained of difficulties with sleep, vivid nightmares, irritability, intrusive recollections and problems with concentration. On other occasions, she reported feeling considerably better. She said her symptoms

²¹¹ Exhibits 7 and 8

²¹² Exhibit 12

became worse when she was stressed.²¹³

208 YZ received treatment from her general practitioner, Dr Laith Gilana, and was provided with a mental health program and referred to a psychiatrist, Dr John Cooper, whom she saw on only a few occasions. He prescribed, again, Pristiq, an antidepressant medication. In April 2014, she was prescribed Epilim.

209 In May 2014, YZ commenced employment in communications with the Chief Justice of the Supreme Court. The role was part time and involved upgrading the Court's website, writing judgment summaries and various reports. I accept she was not involved in criminal reporting. At one point she tried to increase her workload from three to five days, but was not able to do so.

210 In early 2015, YZ saw press coverage of the Lindt Café hostage drama in Sydney. She said she did not cope well with it, became very anxious and had a panic attack.

211 In 2015, she came under the care of another psychiatrist, Dr Darryl Wade. Her previous treating psychologist, Dr Andrea Phelps, she felt, was not providing satisfactory treatment. Dr Wade provided, what she called, "exposure therapy". Around this time, she was still having nightmares and recollections of various violent incidents she had covered, in particular, those involving children.

212 YZ remained working at the Supreme Court until November 2015. At that time, she was offered a job by Maurice Blackburn Lawyers in a media and communications role. The work involves writing for the firm's website, and internal reports and editing. She liaises with journalists in respect of cases in which the firm is involved. The position is full time and she worked in that capacity until July 2018, when she took maternity leave for the birth of her first child. It is expected she will return to full-time work in that position in July 2019.

213 In mid 2016, she commenced seeing another psychiatrist, Dr Benjamin Chia.

²¹³ T662, L25

- 214 With treatment, and because she left *The Age*, YZ said, since 2013, her symptoms have improved. She still does not sleep well and is regularly stressed. She takes medication each day and still has nightmares and flashbacks. She said her memory is significantly affected. Her level of medication has increased.
- 215 A number of medical practitioners were called to give evidence, and reports from those practitioners and other treating consultant practitioners were tendered.
- 216 Dr Phelps treated the plaintiff from March 2013. According to her report, she specialises in the assessment and treatment of PTSD. That practitioner noted that when she first examined YZ, she was feeling overwhelmed because of the cumulative trauma and distress she observed with the victims of crime. She received a history that YZ was not supported in her workplace, including having to wait for EAP counselling over a number of weeks. She initially received a history of intrusive memories, bad dreams, depressed mood and occasional binge drinking. All these symptoms, she said, were consistent with PTSD, but they settled quickly with time off work and counselling. She saw YZ again in August 2013 and noted fleeting suicidal ideation, levels of distress and problems sleeping. She reported problems with concentration, intrusive recollections and difficulty meeting deadlines. She said YZ's symptoms had waxed and waned in response to the trauma which, she said, was typical of PTSD.
- 217 Dr Phelps saw the plaintiff again for a period between January 2014 and June 2014. She noted that the symptoms may be triggered by some further trauma exposure. By the time Dr Phelps saw YZ on the last occasion in April 2014, her symptoms had abated considerably. There was some further email communication in June 2014.
- 218 Dr Cooper treated YZ for the first time in August and again in October 2013.

He said she had features of PTSD and depression, which arose as a result of her exposure to accumulated trauma in her work as a journalist. He suggested that she resume the antidepressant, Pristiq, which she said she did to good effect. He noted she was thinking about an alternative career.

219 The plaintiff's treating general practitioner, Dr Laith Gilani, provided a report of March 2015. Her clinical notes were also tendered. According to her report, she had referred the plaintiff to Dr Cooper in relation to PTSD in August 2013 and said her symptoms fluctuated. Those symptoms affected her ability to carry out her work duties. That practitioner thought her prognosis would depend upon the work in which she was involved. She thought the plaintiff would be reliant on psychological services and antidepressant medication for months to years.

220 YZ was examined on behalf of the defendant by Dr Steven Adlard, psychiatrist, in May 2015. His report was tendered in evidence.²¹⁴ He was provided with a history of the distressing aspects of her work, including obtaining comments from relatives of persons who had been killed, attending funerals of victims, watching crime-scene videos, including those of people being actually killed, and listening to distressing testimony in courts. YZ made reference to the effect upon her of the Darcey Freeman investigation. She said that in 2010, she saw her general practitioner because of relationship difficulties with her then partner and was prescribed Pristiq. According to the material available to Dr Adlard, the general practitioner's notes of the time referred to her feeling depressed, with occasional episodes of anxiety over the years, getting worse. When the relationship stopped, she stopped taking the medication.

221 To Dr Adlard, YZ complained of psychological symptoms, including anxiety, lethargy and lack of motivation. She had an aversity to watching television news programs. She avoided areas where murders had been committed. She became upset going over the Westgate Bridge. She said she did not have flashbacks, but had difficulty getting to sleep. Until recently, she had violent

²¹⁴ Exhibit AF

nightmares. Her concentration and memory were affected. Her use of alcohol had reduced significantly.

222 Dr Adlard concluded YZ had PTSD. He commented:

"PTSD is a condition where a person is exposed either directly or indirectly (or both in this case) to one or more traumatic events, following which the person has reexperiencing symptoms, avoidance, hyperarousal and psychological numbing. ... [YZ] was exposed to a number of very distressing events in the course of her employment, she reacted with distress to these, and she has symptoms from all of the other domains, though they appear to be improving with treatment."²¹⁵

223 Dr Adlard noted the PTSD had impaired YZ's day-to-day social and domestic functioning and, to some extent, affected her ability to work. He thought the prescription of Pristiq and treatment by a psychologist was appropriate. He thought treatment should continue for the foreseeable future.

224 A report of Dr Albert Kaplan, psychiatrist, of January 2016 was tendered.²¹⁶ To that practitioner, YZ gave a history of being anxious all the time, on edge. She said she was irritable and had episodes of panic with increased dizziness and heart rate. She said she still experienced intrusive thoughts and flashbacks of the events which had traumatised her. She avoided watching television or reading newspapers as a result. Her interest and motivation was affected, as was her short-term memory and concentration. He diagnosed the plaintiff as suffering PTSD with symptoms of moderate severity. He thought the prognosis was likely to be unfavourable and that her condition would persist for an indefinite period of time. He said she had a greatly reduced capacity to cope when exposed to stress or pressure and that was likely to aggravate her condition. He thought she had no capacity to work as a journalist.

225 The plaintiff's current treating psychiatrist, Dr Benjamin Chia, provided a report of May 2017, together with his clinical notes.²¹⁷ He said he had been treating YZ since June 2016 for PTSD, which he said arose as a result of vicarious

²¹⁵ DCB 41
²¹⁶ Exhibit AK
²¹⁷ Exhibit AG

trauma sustained while working as a reporter for *The Age*. He had described her suffering from the disorder as extreme, affecting her everyday life. He noted she required management, including psychotherapy, psychotropic medication and lifestyle changes. His report was written in support of an earlier application for a pseudonym order.

226 The clinical notes of Optum Health & Technology were tendered.²¹⁸ These notes are of some significance as they are the reports of psychologists upon whom the plaintiff attended as part of the EAP. In the first session of November 2007, the notes record work stress related to the OPI hearing and a libel proceeding. Further, there was a reference to relationship difficulties. The records state:

“... (s)aid shoulders heavy and can’t keep going like this even though has good capacity to carry heavy load like when reporting on crime/death/accident matters.”

227 In the second session of December 2007, there is reference to the article regarding the St Kilda Police Station. The symptoms complained of include nightmares and that both she and her partner were considering abandoning their careers. In further sessions from November 2007, there is clear reference to symptoms of PTSD, including flashbacks, burnout, aggression and the prescription of antidepressants. There is recorded:

“Feeling very alone and burdened by her constant exposure to trauma, horror, grief”

228 In a further entry of December 2012, it is recorded the plaintiff was feeling much better, more in control and clear about what she wanted. Subsequent sessions in 2011 and 2012 appeared to relate to relationship issues.

229 The lack of a recorded history of symptoms of PTSD, particularly in the sessions of 2011 and 2012, is explicable on a number of bases. The notes do not record everything that was said in the course of the treatment sessions. The plaintiff said in evidence that she did make reference to the problems she experienced

²¹⁸ Exhibit 10

both as a crime and court reporter. I accept this evidence. Further, the condition itself fluctuates, with symptoms coming and going, and over the period she worked as a sports reporter, she said she was coping well with the work.

230 Likewise, the clinical notes of Ms Mott, psychotherapist, who treated the plaintiff on a number of occasions in 2009. The notes appear primarily to relate to relationship problems. Again, however, at that time, the plaintiff was struggling to understand the nature of the symptoms which were affecting her, and the notes do not recall all that was said in clinical sessions.

231 The clinical notes of Dr Wade, psychologist, over the period from 2014 to 2015 refer to symptoms of PTSD which, as best as one can interpret clinical notes, reflect fluctuations in intensity.

232 A medical report of Dr John Douglas, psychiatrist, of January 2014, was tendered in evidence. He examined the plaintiff on behalf of the defendant. At the time of the examination, YZ reported being disturbed by memories of the work she did. She said she was depressed and cried often. She became irritable, snappy, was tired and lacked motivation. She said she found it hard to get to sleep and had nightmares several times per week. Dr Douglas considered the plaintiff did not satisfy the diagnosis for PTSD. He considered she was suffering from "burn out". He diagnosed an Adjustment Disorder with Mixed Anxiety and Depression. He considered the plaintiff did not have the capacity for full pre-injury duties and should not be exposed to the stressful reporting as she had been in the past. He thought the resolution of her symptoms would be slow, possibly over some months. He thought it was reasonable for her to continue taking antidepressant medication and have psychological counselling.

233 The principal protagonists on behalf of each party in respect of the psychological injury, were the consultants, Dr Justin Lewis, on behalf of the plaintiff, and Associate Professor Peter Doherty, on behalf of the defendant.

Both provided reports and gave evidence. Much was made, in the course of submissions, as to which opinion I ought to accept. The reports of Associate Professor Doherty were the subject of significant criticism by Mr Tobin.²¹⁹

234 Dr Lewis examined the plaintiff in 2017 and 2018. He took an extensive history and was provided with a range of documentation. On each occasion, he diagnosed YZ as suffering PTSD. Most recently, he noted the birth of her son provided significant joy and focus. She had ceased drinking alcohol completely over her pregnancy. She complained of flat mood, continuing to experience intrusive thoughts, low motivation and memory difficulties. She said her concentration was poor. She continued to experience nightmares on a weekly to fortnightly basis, which included dreams about matters related to her reporting at *The Age*. She denied any flashbacks or avoidance symptoms. She complained of being numb and disconnected, irritable and agitated. She had not seen her treating psychiatrist, Dr Chia, for about twelve months. She thought her psychological condition had plateaued but remained on the anti-depressant, Pristiq. He concluded that despite some improvement, YZ continued to suffer mood disturbance and residual traumatisation symptoms. He said she continued to meet the criteria for PTSD, although it was partially in remission. He said further, the diagnosis would additionally include Chronic Adjustment Disorder with significant traumatisation symptoms and a secondary Dysthymic Disorder (a low-grade chronic depressive condition). Dr Lewis thought YZ should remain under the care of her general practitioner and strongly suggested a referral to a clinical psychologist.

235 In cross-examination, Dr Lewis said it was not possible to make a diagnosis of PTSD without interviewing a patient. He noted that it was possible, in the early stages of YZ's illness, that there were developing signs of PTSD. He said by the time he assessed her, some years later, the traumatisation symptoms were clearly defined and well established. He said it is quite common for the

²¹⁹

Dr Lewis – Exhibit J; Associate Professor Doherty – Exhibit 17

symptoms of PTSD to wax and wane. They may be aggravated when a person is exposed to further trauma. Mostly, the symptoms are reduced in frequency when a person is removed from exposure to the trauma. He pointed out that the diagnosis by Dr Douglas of “burnout” was not a recognised psychiatric diagnosis.

236 Dr Lewis noted that PTSD tends to be chronic, and the condition rarely resolves. He said individuals have a chronic vulnerability to relapse as a result of direct or indirect reminders of the original trauma. While he noted the plaintiff had been removed from the primary stressor, and was concentrating on nursing her young child, leading to a remittance of her symptoms, nonetheless, she had chronic anxiety symptoms, distressing nightmares and difficulties with agitation, poor mood and memory. He said while the plaintiff’s PTSD might be said to be at the lower end of the scale for those types of disorders, she nonetheless described ongoing disabling symptoms.²²⁰ He said she would not be able to return to work as an investigative journalist where the work involved traumatic content. He commented that her ingestion of Pristiq, at 150 milligrams, was at the higher end of the treatment range. He thought the plaintiff would require that medication on an ongoing basis. He was taken to the symptoms from which she suffered in 2009 and said it would be inappropriate for someone, having suffered those symptoms, to be re-exposed to trauma as a court reporter.

237 There were a number of aspects of Associate Professor Doherty’s assessments which were unusual. In his first report of December 2016, he made an assessment of the plaintiff’s psychiatric condition without conducting any physical or mental state examination. Secondly, in his second assessment of May 2018, where he did examine the plaintiff, she insisted the interview be tape recorded. I have been provided with that recording.

238 It is not necessary for me to refer to the report of Associate Professor Doherty of December 2016. In his report of 2018, he received a history of a range

²²⁰

T801

complaints, including difficulty with sleep, anxiety and stress. She had nightmares and panic attacks, which she controlled with breathing exercises. She said she avoided certain places where crimes had been committed, and she awoke feeling unrefreshed and exhausted. She said she was able to undertake her household chores, but was tired after they were completed. She said she read novels to keep her mind occupied and had an active social life. YZ said she struggled to get through each day and deal with life. She was irritable with her partner. She had travelled overseas to Fiji and undertaken yoga. She claimed her concentration and memory were “shocking”.

239 Associate Professor Doherty was provided with a range of reports, materials and clinical notes. He noted there were relationship issues around 2009. He maintained his view:

“In my opinion, there is no excessive or disproportionate psychological response to the hearing of or reporting of traumatic incidents. There was in my opinion, an adjustment reaction as such, but not the development of a psychiatric disorder of adjustment.

That is, the traumatic incidents caused a psychological reaction, coloured by the worker's psychological vulnerabilities, but not the development of a psychiatric condition, that would meet recognised clinical criteria.”

240 In cross-examination, Associate Professor Doherty was challenged on his assessment that YZ was sour, begrudging and “spat out” the answers to questions.

241 Associate Professor Doherty, when questioned about the content of the nightmares of which he obtained a history from the plaintiff, did not attribute them to work exposure, despite receiving a history that they were related to death and killing. He said he thought the plaintiff was “disturbed”.²²¹ I found his evidence in this regard difficult to understand. He accepted that a person exposed to the type of trauma as the plaintiff had been, faced the risk of development of PTSD.²²²

²²¹ T1047, L22-24

²²² T1051, L26

242 In the course of submissions, Ms Annesley said it was necessary to distinguish psychiatric injury from other workplace grievances the plaintiff may have. She relied upon the opinion of Associate Professor Doherty that while the plaintiff may suffer a situational stress reaction, it did not amount to PTSD. I do not accept this contention. I am satisfied from the plaintiff's description of her symptoms, that they are indeed symptoms of a psychological injury related to her exposure to trauma and not any disaffection with her employer or the work environment.

243 I was impressed by the report and evidence of Dr Phelps, psychologist. She is an acknowledged specialist in PTSD. She treated the plaintiff on a number of occasions. I was further impressed by the reports and evidence of Dr Lewis. In my assessment, his reports were comprehensive, and his evidence given in a measured and thoughtful manner. These practitioners, together with her current treating psychiatrist, Dr Chia, the defendant's consultant practitioner, Dr Adlard, and Dr Kaplan, all concluded the plaintiff's symptoms warranted a diagnosis of PTSD. I prefer those opinions to that of Associate Professor Doherty. I was unimpressed by his attempt to assess the plaintiff without clinical examination on the first occasion, and his view that violent nightmares and flashbacks were not related to the trauma to which the plaintiff had been exposed.

244 Dr Cooper, an early treating psychiatrist, did not diagnose PTSD, although acknowledged the plaintiff had "features" of that condition and depression.

245 I do not accept the opinion of Dr Douglas of 2014 where he said the plaintiff was suffering from "burnout" rather than PTSD; however, he also acknowledged she was suffering from a range of symptoms.

246 Further, the defendant arranged for the plaintiff to be assessed by a number of other consultant psychiatrists, Dr Robert Athey, in May 2014, and Dr Ash Takyar of October 2014. These practitioners were not called, nor their reports

tendered. I infer that their opinions would not have assisted the defendant's case, and more readily accept the opinions of those practitioners who have found the plaintiff suffering from PTSD.

247 In any event, it is not so much to the point as to whether or not there is a psychiatric label which can be attached to the plaintiff's symptoms. The issue is the nature and extent of those symptoms and consequences of the disorder, and the extent to which they affect her everyday life, her recreational, social, domestic and work activities.

248 I accept the evidence of the plaintiff that over the years from the commencement of her employment with the defendant as a crime reporter in 2003, she was exposed to a wide range of disturbing and graphic traumatic events upon which she was required to report. While it is correct that the symptoms of PTSD emerged over time, I accept that she has suffered over the years, a range of very significant and disabling symptoms. These have included depression and anxiety, with panic attacks. Further, she suffers from problems with motivation, memory and concentration. Most significantly, her sleep has been, and remains, affected, with graphic nightmares relating to the events she witnessed, and flashbacks, although these have largely receded. I accept she has chronic anxiety and very significantly, is subject to particular distress when re-exposed to direct and indirect stressors. I accept that while it is possible she may return to journalism, she would not be able to work in the field of crime or court reporting. Symptoms of stress may be triggered by inadvertently watching a television program, or passing the areas where crimes were committed and upon which she reported. Over the years she has abused alcohol, but since her pregnancy, I accept that problem has very significantly improved.

249 These symptoms have required a raft of treatment from her general practitioner, psychologists and psychiatrists. She remains on a relatively high dose of Pristiq, and that is expected to continue for the foreseeable future.

- 250 Nonetheless, I accept there has been significant improvement in YZ's condition since she has left *The Age*. She has returned to employment, initially in the Supreme Court, and more recently in media and communications with a large law firm. It was put by Ms Annesley that the articles she has written, and indeed some of her reading material, is of a graphic, even violent nature and mitigates against the nature and extent of her condition. I do not accept this submission.
- 251 I accept that it is likely she will return to full-time employment at some time with the law firm, and she enjoys and gains satisfaction from that work; however, her days as a journalist with *The Age*, to which she aspired and at an early point loved, are lost, in particular in the area of crime reporting.
- 252 While there indeed has been a significant improvement in the symptoms over recent years, as Dr Lewis said, there are many symptoms which are still present and she remains vulnerable to flare ups of the condition indefinitely. I accept the submission of Mr Tobin that she is significantly psychologically scarred because of her work at *The Age*, and that is likely to remain into the future.
- 253 In these circumstances, I assess general damages in the sum of One Hundred and Eighty Thousand Dollars (\$180,000.00).
- 254 I shall hear further from the parties as to further orders and costs.
